

1989
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-FIRST LEGISLATURE
Convened January 9, 1989. Adjourned April 23, 1989.

1st EXTRAORDINARY SESSION
FIFTY-FIRST LEGISLATURE
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2nd EXTRAORDINARY SESSION
FIFTY-FIRST LEGISLATURE
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DENNIS W. COOPER
Code Reviser

WASHINGTON SESSION LAWS GENERAL INFORMATION

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
- (i) a temporary pamphlet edition consisting of a series of one or more paper bound pamphlets, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent bound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating code sections affected.
- (b) *Temporary pamphlet edition — where and how obtained — price.* The temporary session laws may be ordered from the Statute Law Committee, Legislative Building, Olympia, Washington 98504 at \$5.39 per set (\$5.00 plus \$.39 for state and local sales tax of 7.8%). All orders must be accompanied by payment.
- (c) *Permanent bound edition — when and how obtained — price.* The two-volume set of the permanent bound edition of the 1989 session laws may be ordered from the State Law Librarian, Temple of Justice, Olympia, Washington 98504 for \$43.12 (\$20.00 for each volume plus \$3.12 for state and local sales tax of 7.8%). All orders must be accompanied by payment.

2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were adopted 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 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 pursuant to the authority of RCW 44.20.060 are enclosed in brackets [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 1989 regular session to be July 23, 1989 (midnight July 22). The pertinent date for the Laws of the 1989 1st Extraordinary Session is August 9, 1989 (midnight August 8). The pertinent date for the Laws of the 1989 2nd Extraordinary Session is August 19, 1989 (midnight August 18).
- (b) Laws which carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws which prescribe an effective date, take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 1989 laws may be found at the back of the final pamphlet edition and the permanent bound edition.

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CHAPTER 1

[Initiative Measure No. 518]

MINIMUM WAGE—RATES AND COVERAGE REVISED

AN ACT Relating to the state minimum wage; amending RCW 49.46.010, 49.46.020, and 49.12.121; adding a new section to chapter 49.46 RCW; and providing an effective date.

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

Sec. 1. Section 1, chapter 294, Laws of 1959 as last amended by section 364, chapter 7, Laws of 1984 and RCW 49.46.010 are each amended to read as follows:

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director;

(3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) ~~((Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock; bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; and the exclusions from the term "employee" provided in this item shall not be deemed applicable with respect to commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;~~

~~(b) Any individual employed in domestic service in or about a private home;~~

~~(c)) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and~~

customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by regulations of the director. However, those terms shall be defined and delimited by the state personnel board pursuant to chapter 41.06 RCW and the higher education personnel board pursuant to chapter 28B.16 RCW for employees employed under their respective jurisdictions;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part I of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial

portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

Sec. 2. Section 2, chapter 294, Laws of 1959 as last amended by section 2, chapter 289, Laws of 1975 1st ex. sess. and RCW 49.46.020 are each amended to read as follows:

~~((†))~~ Every employer shall pay to each of his or her employees who ~~((have))~~ has reached the age of eighteen years wages at a rate of not less than ~~((one dollar))~~ three dollars and ~~((sixty))~~ eighty-five cents per hour except as may be otherwise provided under ~~((subsections (2) through (7) of this section or as otherwise provided under this chapter. PROVIDED, That beginning the calendar year 1974, the applicable rate under this section shall be one dollar and eighty cents per hour, and beginning with September 1, 1975 the applicable rate under this section shall be two dollars and ten cents an hour, and beginning the calendar year 1976 the applicable rate under this section shall be two dollars and thirty cents an hour))~~ this section. Beginning January 1, 1990, the state minimum wage shall be four dollars and twenty-five cents per hour. The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

~~((2) Any individual eighteen years of age or older, unless exempt under the provisions of section 1(5)(k)(8) of this 1975 amendatory act, employed by the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof shall be paid wages beginning with September 1, 1975, at a rate of not less than two dollars an hour, and beginning the calendar year 1976 at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977 at a rate of not less than two dollars and thirty cents an hour.~~

~~(3) Any individual eighteen years of age or older engaged in performing services in a nursing home licensed pursuant to chapter 18.51 RCW, shall be paid wages beginning with September 1, 1975, at a rate of not less than two dollars and ten cents an hour, and beginning the calendar year~~

~~1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977, at a rate of not less than two dollars and thirty cents an hour:~~

~~(4) Any individual eighteen years of age or older engaged in performing services in a hospital licensed pursuant to chapter 70.41 RCW, or chapter 71.12 RCW, shall be paid wages beginning with September 1, 1975, at a rate of not less than two dollars and ten cents an hour, and beginning the calendar year 1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977 at a rate of not less than two dollars and thirty cents an hour:~~

~~(5) Any individual eighteen years of age or older employed in a retail or service establishment and who is so employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs shall be paid wages beginning with September 1, 1975, at a rate of not less than two dollars an hour, and beginning the calendar year 1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977, at a rate of not less than two dollars and thirty cents an hour:))~~

Sec. 3. Section 15, chapter 16, Laws of 1973 2nd ex. sess. and RCW 49.12.121 are each amended to read as follows:

The committee, or the director, may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business or occupation in the state of Washington and may adopt special rules for the protection of the safety, health and welfare of minor employees(~~(such minimum wages not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended)~~). The minimum wage for minors shall be as prescribed in RCW 49.46.020. The committee shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards set forth concerning the health, safety and welfare of minors as set forth in the rules and regulations promulgated by the committee. No minor person shall be employed in any occupation, trade or industry subject to this 1973 amendatory act, unless a work permit has been properly issued, with the consent of the parent, guardian or other person having legal custody of the minor and with the approval of the school which such minor may then be attending.

NEW SECTION. Sec. 4. A new section is added to chapter 49.46 RCW to read as follows:

Beginning January 1, 1991, and prior to January 1 of each odd-numbered year thereafter, the office of financial management shall review the state minimum wage and make recommendations to the legislature and the governor regarding its increase.

NEW SECTION. Sec. 5. This act shall take effect January 1, 1989.

Filed in Office of Secretary of State March 21, 1988.

Passed by the vote of the people at the November 8, 1988 state general election.

Proclamation signed by the Governor, December 8, 1988, declaring measure effective law.

CHAPTER 2

[Initiative Measure No. 97]

HAZARDOUS WASTE CLEAN UP

AN ACT Relating to the environment; amending RCW 43.21B.310; adding a new chapter to Title 70 RCW; adding a new chapter to Title 82 RCW; adding a new section to chapter 70.105 RCW; adding a new section to chapter 70.105A RCW; adding a new section to chapter 90.48 RCW; creating new sections; repealing RCW 90.48.460; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. **DECLARATION OF POLICY.** (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of this act is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential

that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

NEW SECTION. Sec. 2. **DEFINITIONS.** (1) "Department" means the department of ecology.

(2) "Director" means the director of ecology or the director's designee.

(3) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(4) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(5) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010(5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(6) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit

of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility.

(7) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(8) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under section 4 of this act. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(9) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(10) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(11) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

NEW SECTION. Sec. 3. DEPARTMENT'S POWERS AND DUTIES. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of section 2(5) of this act and classify substances and products as hazardous substances for purposes of section 9(1) of this act; and

(f) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.04 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department, within nine months after the effective date of this section, shall adopt, and thereafter enforce, rules under chapter 34.04 RCW to:

(a) Provide for public participation, including at least (i) the establishment of regional citizen's advisory committees, (ii) public notice of the development of investigative plans or remedial plans for releases or threatened releases, and (iii) concurrent public notice of all compliance orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and

(d) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and

means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of section 2(5) of this act and the classification of substances or products as hazardous substances for purposes of section 9(1) of this act. The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

NEW SECTION. Sec. 4. STANDARD OF LIABILITY. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

- (a) The owner or operator of the facility;
- (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
- (c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;
- (d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to

the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this subsection.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under section 3(2)(d) of this act and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity.

(b) A settlement agreement under this subsection shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(5) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

NEW SECTION. Sec. 5. ENFORCEMENT. (1) With respect to any release, or threatened release, for which the department does not conduct or

contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after the effective date of this section.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under section 4 of this act and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, including amounts spent prior to the effective date of this section.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5) (a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and section 6 of this act may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

NEW SECTION. Sec. 6. TIMING OF REVIEW. The department's investigative and remedial decisions under sections 3 and 5 of this act and its decisions regarding liable persons under sections 2(8) and 4 of this act shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under section 5(3) of this act; (2) in a suit by the department to enforce an order or seek a civil penalty under this chapter; (3) in a suit for reimbursement under section 5(2) of this act; (4) in a suit by the department to compel investigative or remedial action; and (5) in a citizen's suit under section 5(5) of this act. The court shall uphold the department's actions unless they were arbitrary and capricious.

NEW SECTION. Sec. 7. TOXICS CONTROL ACCOUNTS. (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 section 10 of this act 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 after the effective date of this section; (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 RCW 70.95.130, 70.95.140, 70.95.220, 70.95.230, 70.95.530, 70.105.220, 70.105.225, 70.105.235, and 70.105.260;

(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 section 3(2)(d) of this act but only when the amount and terms of such funding are established under a settlement agreement under section 4(4) of this act 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 top two 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 section 10 of this act and which are attributable to that portion of the rate

equal to thirty-seven one-hundredths of one percent. Moneys deposited in the local toxics control account shall be used by the department for grants to local governments for the following purposes in descending order of priority: (a) Remedial actions; (b) hazardous waste plans and programs under RCW 70.105.220, 70.105.225, 70.105.235, and 70.105.260; and (c) solid waste plans and programs under RCW 70.95.130, 70.95.140, 70.95.220, and 70.95.230. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105 and 70.95 RCW.

(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. All earnings from investment of balances in the accounts, except as provided in RCW 43.84.090, shall be credited to the accounts.

(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. No grant may exceed fifty thousand dollars though it 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.

(7) The department shall adopt rules for grant issuance and performance.

NEW SECTION. Sec. 8. INTENT OF POLLUTION TAX. It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law.

NEW SECTION. Sec. 9. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hazardous substance" means:

(a) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499;

(b) Petroleum products;

(c) Any pesticide product required to be registered under the federal insecticide, fungicide and rodenticide act; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition shall take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items containing both: (i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and (ii) one or more substances that are not hazardous substances.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. Sec. 10. POLLUTION TAX. (1) A tax is imposed on the privilege of possession of hazardous substances in this state. The rate

of the tax shall be seven-tenths of one percent multiplied by the wholesale value of the substance.

(2) Moneys collected under this chapter shall be deposited in the toxics control accounts under section 7 of this act.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

NEW SECTION. Sec. 11. EXEMPTIONS. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(6) Any persons possessing a hazardous substance where such possession first occurred before the effective date of this section.

NEW SECTION. Sec. 12. CREDITS. (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) Which is imposed on the act or privilege of possessing hazardous substances, and which is not generally imposed on other activities or privileges; and

(ii) Which is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

NEW SECTION. Sec. 13. WATER DISCHARGE FEES. A new section is added to chapter 90.48 RCW to read as follows:

(1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of the effective date of this section, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of five cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from the effective date of this section and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on

public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(6) The department shall submit an annual report to the legislature showing detailed information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(7) The legislative budget committee in 1993 shall review the fees established under this section and report its findings to the legislature in January 1994.

Sec. 14. Section 6, chapter 109, Laws of 1987 and RCW 43.21B.310 are each amended to read as follows:

(1) Any order issued by the department or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 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 receipt of the order. Except as provided under chapter 70.— RCW (sections 1 through 7 of this 1988 act,) 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 (section 7, chapter 109, Laws of 1987) 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 receipt.

NEW SECTION. Sec. 15. A new section is added to chapter 70.105 RCW to read as follows:

Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (1) A class B felony if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or (2) a class C felony if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm. As used in this section, "imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated. As used in this section, "knowingly" refers to an awareness of facts, not awareness of law. Violators shall be punished as provided under RCW 9A.20.021.

NEW SECTION. Sec. 16. A new section is added to chapter 70.105A RCW to read as follows:

The legislature is encouraged to revise the hazardous waste fees prescribed in RCW 70.105A.030 in a manner which provides an incentive for waste reduction and recycling. If prior to the effective date of this section, RCW 70.105A.030 as it existed on August 1, 1987, has not been amended in a manner which specifically provides an incentive for hazardous waste reduction and recycling, then (1) the requirement to pay the fees prescribed in that section is eliminated solely for fees due and payable on June 30, 1989; and (2) the department of ecology shall prepare, and submit to the legislature by January 1, 1990, a proposed revision designed to provide an incentive for hazardous waste reduction and recycling.

NEW SECTION. Sec. 17. REPEALER. Section 4, chapter 249, Laws of 1985 and RCW 90.48.460 are each repealed.

This section shall take effect on the date the rule establishing the initial fee schedule under section 13 of this act takes effect.

NEW SECTION. Sec. 18. 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. 19. CONSTRUCTION. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

NEW SECTION. Sec. 20. EXISTING AGREEMENTS. The consent orders and decrees in effect on the effective date of this section shall remain valid and binding.

NEW SECTION. Sec. 21. CAPTIONS. As used in this act, captions constitute no part of the law.

NEW SECTION. Sec. 22. SHORT TITLE. This act shall be known as "the model toxics control act."

NEW SECTION. Sec. 23. LEGISLATIVE DIRECTIVE. Sections 1 through 7 of this act shall constitute a new chapter in Title 70 RCW. Sections 8 through 12 of this act shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 24. REPEALER. Any bill of the legislature involving hazardous substance cleanup (along with any other subject matter) that is enacted between August 15, 1987, and January 1, 1988, is superseded and repealed.

NEW SECTION. Sec. 25. IMPLEMENTATION. By the effective date of this act, the legislature shall provide for any appropriations and/or transfers of appropriations or funds made or accumulated under the bill repealed under section 24 of this act that are necessary to implement this act.

NEW SECTION. Sec. 26. EFFECTIVE DATE. (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988.

Filed in Office of Secretary of State August 13, 1987.

Passed by the vote of the people at the November 8, 1988 state general election.

Proclamation signed by the Governor, December 8, 1988, declaring measure effective law.

CHAPTER 3

[Substitute House Bill No. 1599]

ALCOHOLISM AND DRUG ADDICTION TREATMENT AND SUPPORT ACT—
FUNDING AND ELIGIBILITY MODIFICATIONS

AN ACT Relating to programs for persons suffering from alcoholism or drug addiction; adding a new section to chapter 74.50 RCW; adding a new section to chapter 74.08 RCW; creating a new section; repealing RCW 74.50.030; making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that chapter 74.50 RCW, the alcoholism and drug addiction treatment and support act, is a successful method of providing treatment to indigent alcoholics and drug addicts. The legislature further finds that the program is facing fiscal restraints in the current biennium that may prevent the program from accomplishing its mission and may do irreparable harm to the continuation of the program.

NEW SECTION. Sec. 2. A new section is added to chapter 74.50 RCW to read as follows:

Within available funds, the department may provide to eligible persons services for assessment, inpatient and outpatient treatment, and shelter. In order to control expenditures or to comply with conditions or limitations placed on appropriations, the department may establish caseload ceilings and client eligibility standards for any of these services. The eligibility standards may provide for limiting eligibility for any service to that class or classes of applicants that the department determines constitute the highest priority for services under this chapter. The department's determination of priority shall be based on the department's estimate of the potential benefit to applicants and the likelihood that the service will reduce future demands for state assistance. The department may provide such a priority classification system for any or all services provided under this chapter. Any caseload ceiling or priority classification system adopted by the department shall be consistent with any appropriation condition or limitation prescribing or dealing with such a ceiling or system. If funds provided for any of these services have been fully expended, the department shall immediately discontinue that service.

NEW SECTION. Sec. 3. A new section is added to chapter 74.08 RCW to read as follows:

Nothing in this chapter except RCW 74.08.070 and 74.08.080 applies to chapter 74.50 RCW.

NEW SECTION. Sec. 4. Section 4, chapter 406, Laws of 1987, section 2, chapter 163, Laws of 1988 and RCW 74.50.030 are each repealed.

NEW SECTION. Sec. 5. The sum of ten million two hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 1989, from the general fund to the department of social and health services solely for alcoholism and drug addiction services as specifically described in this section. Four million eight hundred thousand dollars of this appropriation shall be from federal sources. The appropriation in this section is subject to the following conditions and limitations:

(1) This appropriation shall not be construed as a commitment to a funding level for the program for the 1989-91 fiscal biennium.

(2) The department shall manage treatment services so that caseloads are gradually modified to produce a caseload of approximately 1,075 outpatient clients on June 30, 1989. Living allowance stipends for outpatient treatment clients may be paid within this appropriation.

(3) The highest priority classes of clients for treatment services, in order of priority, are: (a) Pregnant women; (b) persons referred through child protective services; (c) adults living in households with children; and (d) persons who receive substantial services from the state, as determined by the department.

(4) The department shall manage shelter services so that caseloads are gradually modified to achieve an average of approximately 1,213 clients per month receiving shelter services during the period from January 1, 1989, through June 30, 1989.

(5) For the period February 1, 1989, through June 30, 1989, the average monthly rate of expenditure for assessment services shall be not more than seventy-five percent of the expenditure rate for assessment services during January 1989.

(6) If any condition or limitation in this section is held null or invalid, the general fund—state appropriation in this section shall lapse and any unexpended funds shall revert to an unappropriated status.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 17, 1989.

Passed the Senate February 17, 1989.

Approved by the Governor February 17, 1989.

Filed in Office of Secretary of State February 17, 1989.

CHAPTER 4

[Initiative Measure No. 99]

PRESIDENTIAL PREFERENCE PRIMARY

AN ACT Relating to elections; providing for a presidential preference primary; amending RCW 29.13.010 and 29.13.020; and creating a new chapter in Title 29 RCW.

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

NEW SECTION. Sec. 1. The people of the state of Washington declare that:

(1) The current presidential nominating caucus system in Washington state is unnecessarily restrictive of voter participation in that it discriminates against the elderly, the infirm, women, the handicapped, evening workers, and others who are unable to attend caucuses and therefore unable to fully participate in this most important quadrennial event that occurs in our democratic system of government.

(2) It is the intent of this chapter to make the presidential selection process more open and representative of the will of the people of our state.

(3) A presidential primary will afford the maximum opportunity for voter access at regular polling places during the daytime and evening hours convenient to the most people.

(4) This state's participation in the selection of presidential candidates shall be in accordance with the will of the people as expressed in a presidential preference primary.

(5) It is the intent of this chapter, to the maximum extent practicable, to continue to reserve to the political parties the right to conduct their delegate selection as prescribed by party rules insofar as it reflects the will of the people as expressed in a presidential primary election conducted every four years in the manner described by this chapter.

NEW SECTION. Sec. 2. On the fourth Tuesday in May of each year when a president of the United States is to be nominated and elected, or such other date as may be selected by the secretary of state to advance the concept of a regional primary, a presidential preference primary shall be held at which voters may express their preferences as to who should be the nominee of a major political party for the office of president.

NEW SECTION. Sec. 3. The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than the thirty-ninth day before the presidential preference primary. The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29.79.200 and 29.79.210.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least thirty-five days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year.

NEW SECTION. Sec. 4. The arrangement and form of presidential primary ballots shall be substantially as provided for any primary election within the state except as may be modified by this chapter or by rule of the secretary of state as provided for in section 7 of this act to adequately reflect the intent of this chapter.

A separate ballot shall be prepared for each major political party that has candidates whose names have been authorized for placement on presidential preference primary ballots under section 3 of this act. The names of all candidates for a party's nomination for the office of president shall be listed alphabetically in a column on that party's ballot. There shall be a printed box adjacent to the name of each candidate. A blank space to allow the voter to write in the name of another candidate shall also be included on each ballot.

The ballot, in providing for a choice of candidates for the office of president, shall set forth only those candidates, with their political party affiliation, who have qualified for a place on the ballot under section 3 of this act.

NEW SECTION. Sec. 5. Insofar as is practicable, and where the provisions of this chapter do not specifically indicate otherwise, the presidential preference primary shall be conducted in the same manner as a state partisan primary, including the certification of the election returns by the secretary of state. The requirement of rotation of names on the ballot does not apply to the candidates listed on the presidential preference primary ballot.

County auditors may combine and consolidate two or more precincts for the purpose of conducting the presidential preference primary only if precinct vote totals for the primary can still be made available and the consolidation does not require a voter to go to a location different from that of the last regular election.

Each person desiring to vote in the presidential preference primary shall receive a ballot request form on which the voter shall sign his or her name and address and declare the party primary in which he or she wishes to participate.

The secretary shall prescribe rules for providing each party central committee a list of the voters who participated in the presidential primary of that party.

The signed ballot request forms shall be maintained in the centralized containers by the county auditor for a period of time as specified by rule of the secretary of state, after which time they shall be destroyed, unless otherwise directed by federal law.

At a presidential preference primary, a voter may cast no more than one vote on a ballot. Any presidential preference primary ballot with more than one vote is void, and notice to this effect, couched in clear, simple language, and printed in large type, shall appear on the face of each presidential preference primary ballot. Where voting machines or electronic voting devices are in use, the notice shall be displayed on or about each machine or device.

NEW SECTION. Sec. 6. (1) The results of the presidential preference primary shall determine the percentage of delegate positions to be allocated to each presidential candidate. Selection of individuals to delegate positions shall be in compliance with applicable state party rules, and to the extent practicable, delegates shall be apportioned among the state's congressional districts. Delegate positions shall be allocated to presidential candidates in the manner specified in subsection (3) of this section except as otherwise provided by national party rules.

(2) All votes cast for a particular presidential candidate in a party's primary shall be considered votes for delegate positions committed to that candidate.

Each candidate for a delegate position who is committed to a particular presidential candidate, before the selection of delegates, shall sign and submit to the appropriate party's state committee the following pledge:

Delegate Pledge

I,, do hereby swear that I am a supporter of for the office of President of the United States; and that if elected as a delegate to the Party National

Convention I pledge to cast my ballot as a delegate to the convention for that candidate on the first two ballots unless released by the candidate, and I pledge furthermore to do all that I can to advance the cause of that candidate at the national convention.

(3) Except as otherwise provided by national party rules, delegate positions shall be allocated from the state at-large among presidential candidates who receive at least fifteen percent of the total votes cast for candidates of the same political party, or such other percentage as national party rules may provide. Each candidate so qualified shall be allocated a percentage of delegate positions equal to as nearly as practicable that candidate's percentage of the total votes cast for candidates of the same political party in the presidential preference primary. The votes of candidates who do not receive at least fifteen percent of the total votes cast in their parties' presidential preference primary shall be proportionately allocated to those candidates who did receive fifteen percent or more of the total votes cast in their parties' presidential preference primary.

(4) If any presidential candidate, at any time after the presidential preference primary, formally releases the delegates holding positions committed to him or her under the formula established by subsection (3) of this section, the delegates shall be considered uncommitted. The delegates holding positions committed to a candidate shall be considered formally released when the candidate so notifies, in writing, the chair of his or her party's delegation.

(5) In the event of the death of a candidate to whom delegate positions have been committed, all such positions shall be considered uncommitted.

(6) If no ballot choice on a political party ballot receives fifteen percent or more of the total votes cast, the state committee of the political party shall determine how delegate positions allotted to the state by the national committee shall be committed.

(7) If a vacancy occurs in the position of delegate, the remaining delegates committed to the same preference as the vacating person shall name a person to fill the vacancy.

NEW SECTION. Sec. 7. The secretary of state as chief election officer may make rules in accordance with chapter 34.04 RCW or its statutory successor to facilitate the operation, accomplishment, and purpose of this chapter.

NEW SECTION. Sec. 8. Whenever a presidential preference primary election is held as provided by this chapter, the state of Washington shall assume all costs of holding the election if it is held alone. If any other election or elections are held at the same time, the state is liable only for its

prorated share. The county auditor shall determine the election costs, including the state's prorated share, if applicable, and shall file a certified claim therefore with the secretary of state. The secretary of state shall compile such claims for presentation to the next succeeding legislature in the same manner as other legislative relief claims.

Sec. 9. Section 29.13.010, chapter 9, Laws of 1965 as last amended by section 1, chapter 3, Laws of 1980 and RCW 29.13.010 are each amended to read as follows:

All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, district, and precinct officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A state-wide general election shall be held on the first Tuesday after the first Monday of November of each year: PROVIDED, That the state-wide general election held in odd-numbered years shall be limited to (1) city, town, and district general elections as provided for in RCW 29.13.020 as now or hereafter amended, or as otherwise provided by law; (2) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the congress of the United States; (3) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (4) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (5) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate: PROVIDED FURTHER, That this section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer: PROVIDED HOWEVER, That the county legislative authority may, if they deem an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. A special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March ~~((; except that if a state-wide political party caucus by a major political party is scheduled on the second~~

~~Tuesday, then a special election may not be held on such date but may be held on the third Tuesday in March));~~

- (c) The first Tuesday after the first Monday in April;
- (d) The ~~((third))~~ fourth Tuesday in May;
- (e) The day of the primary as specified by RCW 29.13.070; or
- (f) The first Tuesday after the first Monday in November.

In addition to the dates set forth in (a) through (f) above, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from failure of a county to pass a special levy for the first time or from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

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 except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution.

Sec. 10. Section 29.13.020, chapter 9, Laws of 1965 as last amended by section 6, chapter 167, Laws of 1986 and RCW 29.13.020 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 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.57.180 and nonhigh capital fund aid proposals as provided for in chapter 28A.56 RCW.

(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 him at least forty-five days prior to the proposed election date, may, if he deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he may combine, unite, or divide precincts. A special election called by such governing body 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(~~(, except that if a state-wide political party caucus by a major political party is scheduled on the second Tuesday, then a special election may not be held on such date but may be held on the third Tuesday in March)~~);

(c) The first Tuesday after the first Monday in April;

(d) The ((third)) fourth Tuesday in May;

(e) The day of the primary election as specified by RCW 29.13.070; or

(f) The first Tuesday after the first Monday in November.

In addition to (a) through (f) above, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from failure of a school or junior taxing district to pass a special levy or bond issue for the first time or 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 (e) and (f) of this subsection. Such special election shall be conducted and notice thereof given in the manner provided by law.

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.

NEW SECTION. Sec. 11. Sections 1 through 8 of this act shall constitute a new chapter in Title 29 RCW.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House February 13, 1989.

Passed the Senate March 31, 1989.

Filed in Office of Secretary of State March 31, 1989.

CHAPTER 5

[House Bill No. 1138]

HONEY BEE COMMISSION—ESTABLISHMENT

AN ACT Relating to honey bees; and adding a new chapter to Title 15 RCW.

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

NEW SECTION. Sec. 1. The purpose of this chapter is to advance the public welfare and education and to promote the interest, products, services, and stabilization of Washington's honey bee industry.

The legislature finds that:

(1) Increasing the consumption of products of the honey bee industry and promoting the use of its services and stabilizing the honey bee industry within the state and nation is a valid and necessary exercise of the power of the state to protect the public health, to provide for the economic development of the state, and to promote the welfare of the people of the state;

(2) Honey bee industry products produced and services provided in Washington make an important contribution to the agricultural industry of the state of Washington. The business of researching, marketing, and distributing such products and the promotion of its services is in the public interest;

(3) It is necessary to enhance the reputation of Washington honey bee industry products and services in domestic and national markets;

(4) It is necessary to promote and educate the public regarding the value of honey bee industry products and services, and to spread that knowledge throughout the state and nation to increase the awareness and consumption of honey bee products and the use of honey bee services;

(5) State and national markets for Washington honey bee industry products may benefit from promotion of honey bee products through education and advertising;

(6) It is necessary to stabilize the Washington honey bee industry, to enlarge its markets, and increase the consumption of Washington honey bee industry products and services to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of a reasonable standard of living;

(7) Providing information to the public on the manner, cost, and expense of producing, and the care taken to produce and sell, honey bee industry products and services of the highest quality, the methods and care used in their preparation for market, and the methods of sale and distribution is in the public interest;

(8) It is necessary to protect the public by educating it on the various benefits of honey bee industry services, the food value of its products, and their industrial and medicinal uses.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Affected person" means an apiarist, manufacturer, processor, first handler, broker, or volunteer who shall pay to the commission the minimum assessments required in section 14 of this act.

(2) "Apiarist" means any person, firm, partnership, association, or corporation who owns, operates, manages, or brokers ten or more honey bee (*Apis mellifera*) colonies or any volunteer participant having less than ten colonies in the state of Washington.

(3) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(4) "Broker" means any person other than an apiarist who, for a fee, places or sets twenty-five or more bee colonies for pollination or buys and sells one thousand dollars or more per year of industry products he or she does not produce or manufacture.

(5) "Commission" means the Washington state honey bee industry commission or its authorized agents.

(6) "Department" means the department of agriculture.

(7) "Director" means the director of the department of agriculture.

(8) "First handler" means any person in Washington who imports industry products or bee supplies and equipment into Washington for processing, packing, or sale in the state of Washington.

(9) "Industry products" means queen bees, packaged bees, and items which are made by bees including, but not limited to, honey, pollen, bees wax, and propolis and items manufactured for use in the honey bee industry as enumerated under "manufacturer" in this section.

(10) "Manufacturer" means any person making bee supplies and equipment such as: Supers (hive boxes), frames, bees wax foundation, smokers, extractors, bee veils, pollen traps, queen rearing equipment, bee cages and packages, queen excluders, and other bee supplies used in the honey bee industry.

(11) "Person" means any individual, firm, partnership, or corporation engaged in the apiculture industry.

(12) "Processor" means any person processing, selling, marketing, or distributing bee industry products.

(13) "Retail sales" means those sales made directly to consumers whether apiarists, brokers, or persons involved in the apiculture industry, or the public.

NEW SECTION. Sec. 3. The Washington state honey bee commission shall be established following approval of a referendum by a majority of the affected apiarists and brokers, as set forth in section 14(4) of this act for assessment increases.

NEW SECTION. Sec. 4. The commission shall consist of the following members:

(1) Apiarist position one shall represent area one, which includes the counties of Whatcom, San Juan Island, Skagit, Snohomish, and King; and

(2) Apiarist position two shall represent area two, which includes the counties of Pierce, Kitsap, Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, Skamania; and

(3) Apiarist positions three and four shall represent area three, which includes the counties of Kittitas, Yakima, Klickitat, and Benton; and

(4) Apiarist position five shall represent area four, which includes the counties of Okanogan, Chelan, and Douglas; and

(5) Apiarist position six shall represent area five, which includes the counties of Grant, Adams, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

(6) Apiarist position seven shall represent area six, which includes the counties of Spokane, Lincoln, Ferry, Stevens, and Pend Oreille;

(7) Position eight, appointed by the director, shall be a manufacturer or broker of industry products representing Washington residents engaged in the apiculture industry; and

(8) Position nine, appointed by the director, shall be a processor or first handler representing residents engaged in Washington's honey bee industry; and

(9) Position ten shall be the director of the Washington state department of agriculture, who shall be a nonvoting ex officio member; and

(10) Position eleven, appointed by the director, may be an affected person representing out-of-state interests who are not Washington residents but are active as affected persons in Washington.

NEW SECTION. Sec. 5. (1) Commission positions one through seven shall be filled by persons who meet the following requirements:

- (a) Resident of this state;
- (b) Resident of the area they represent; and
- (c) Actually engaged in owning, operating, or as a broker of bee colonies for the five years immediately preceding their election.

(2) Commission positions eight and nine shall be filled by persons who meet the following requirements:

- (a) Resident of this state; and
- (b) Actually engaged as a manufacturer, broker of industry products, processor, or first handler for the five years immediately preceding their election.

(3) Commission members shall be immediately disqualified if they no longer meet the qualifications during their terms of office. The vacancy on the commission shall be filled according to section 38 of this act.

(4) Position eleven shall be filled by a person who qualifies under subsection (1)(c) or (2)(b) of this section and is not a resident of Washington.

NEW SECTION. Sec. 6. (1) The regular terms of office of each elected member of the commission shall be three years, except that the term of office for the initial members shall be as follows:

- (a) Positions for areas one, four, and seven – one year.
- (b) Positions for areas two, five, and eight – two years.
- (c) Positions for areas three, six, and nine – three years.
- (d) If filled, position for area eleven – three years.

(2) No elected member of the board may serve more than two full consecutive three-year terms.

(3) Terms of office shall end on August 31 of the last year of the elected or appointed term.

(4) Any vacancies on the commission shall be filled by a person meeting the qualifications established in section 37 of this act appointed by the other voting members of the commission. The appointee shall hold office for the remainder of the term, at which time an election for that position shall be conducted.

NEW SECTION. Sec. 7. (1) Apiarist members of the commission shall be nominated and elected by the apiarists within the district they are to represent in the year in which a member's term expires. The candidate receiving the largest number of votes cast shall be elected. The election shall be by secret mail ballot and shall be conducted by the director, who shall be reimbursed for actual expenses of conducting the election by the commission.

(2) The director shall provide forms for the nomination of candidates to each affected person. The nomination form shall provide for the name of the person being nominated and the names of five persons supporting the nomination.

(3) The persons nominating the candidate shall affirm that the candidate meets the qualifications and is willing to serve by signing the nomination form.

(4) The nomination forms shall be returned to the director by June 30 of the election year, and the director shall not accept any nomination postmarked later than midnight of that date.

(5) In the event no nomination is submitted for a position, the director shall nominate at least two, but no more than three, qualified persons and place their names on the election ballot as nominees. Any qualified person may be elected by write-in ballot, even though his or her name was not placed in nomination.

(6) Ballots for electing commission members shall be mailed by the director to all apiarists and brokers in areas where elections are to be held no later than July 15. Ballots, to be valid, shall be returned to the director postmarked no later than July 31. Elected persons shall take office effective September 1 of the year elected except initial elections shall take place within one hundred twenty days after the effective date of this act.

NEW SECTION. Sec. 8. (1)(a) The director shall cause a list to be prepared of all apiarists, as defined in section 2 of this act, from the list of apiarists registered with the department under RCW 15.60.030. A qualified person may, at any time, have his or her name placed on the list by registering with the department.

(b) The director shall cause a list to be prepared of manufacturers, processors, and first handlers. The list shall be prepared from any information the director has at hand or may readily obtain. A qualified person may,

at any time, have his or her name placed on the list by notifying the department and providing such information as the department deems necessary to determine whether the person qualifies as a manufacturer, processor, or first handler under section 2 of this act.

(c) For all purposes of giving notice and conducting elections or referenda, the lists the director has on hand under this section, corrected up to the day next preceding the date for issuing notices or ballots, are, for purposes of this chapter, deemed to be the lists of all persons entitled to notice or to assent or dissent or to vote.

(2) Any person may file his or her name and address with the commission for the purpose of receiving notices regarding the activities of the commission. Persons who are not Washington residents but are active as affected persons in this state and who wish to be considered for appointment to position eleven on the commission may file their names with the director. A person desiring such consideration must supply such information as the director deems appropriate.

NEW SECTION. Sec. 9. The commission shall reimburse the director for the actual costs incurred in conducting the elections and referendums, and acquiring lists of affected persons.

NEW SECTION. Sec. 10. (1) A majority of the commission members shall constitute a quorum for the transaction of all business of the commission.

(2) Members of the commission shall be reimbursed for travel expenses, as prescribed by the commission, for each day spent in attendance at, or traveling to and from, commission meetings or when conducting authorized commission business.

NEW SECTION. Sec. 11. Copies of the proceedings, records, and acts of the commission, when certified by the secretary, shall be admissible in any court and be evidence of the truth of the statements therein contained.

NEW SECTION. Sec. 12. The commission may elect an executive secretary who is not a member and fix his or her compensation and may appoint a treasurer who shall sign all vouchers and receipts for moneys received by the commission. The commission shall purchase for each of its members a fidelity bond executed by a surety company authorized to do business in the state, in favor of the state and the commission, in a sum to be determined by the commission.

NEW SECTION. Sec. 13. The commission shall have the following powers and duties:

- (1) To elect a chairperson and other officers as it deems advisable;
- (2) To promulgate rules and regulations under the administrative procedure act, chapter 34.05 RCW, and RCW 15.04.200 as necessary to effectuate the purpose and policies of this chapter;

(3) To administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to fulfill the purpose thereof;

(4) To employ and discharge advertising agents, attorneys as permitted by the attorney general, agents, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(5) To establish offices, hire employees who shall be exempt from chapter 41.06 RCW, incur expenses which shall not exceed revenues, enter into contracts, and create such liabilities as are reasonable and proper for the administration of this chapter;

(6) To investigate and refer violations of this chapter to local prosecuting attorneys or special prosecutors appointed by the commission and the local prosecuting attorney;

(7) To contract for scientific research designed to improve production, pollination, management, quality, processing, and distribution and to develop and discover uses for products of the honey bee industry;

(8) To make in its name advertising contracts and other agreements necessary to promote the industry and bee products and services in state, national, and foreign markets;

(9) To keep accurate records of all commission dealings, which shall be open to public inspection and audit by authorized state agencies;

(10) To contract for research to develop more efficient methods of promoting the honey bee industry and its products and services;

(11) To develop and conduct educational programs for the benefit of industry and to inform the public regarding Washington's honey bee industry;

(12) To enter into contracts and agreements for purposes consistent with this chapter;

(13) To publish at least an annual report of its activities and financial status subject to audit by the state auditor;

(14) To establish an operating monetary reserve and carry over to subsequent fiscal periods any excess funds in the reserve: PROVIDED, That the reserve funds shall not exceed one fiscal period's budget. The reserve funds shall only be used to defray any expenses authorized under this chapter;

(15) To audit any affected person's records as described in section 20 of this act; and

(16) To consider the assessment of honey or manufactured bee supplies produced or sold in Washington. Assessments shall only be levied after a referendum is conducted and approved by a majority vote, as set forth in section 14(4) of this act, of persons engaged in the honey bee industry of Washington.

NEW SECTION. Sec. 14. (1) The commission shall collect annual assessments as follows:

(a) Twenty-five cents for each colony operated by an apiarist or broker in Washington at any time in a calendar year. Each colony shall be assessed only once per calendar year. There shall be a minimum assessment of ten dollars.

(b) The sale of a business enterprise by an apiarist or broker shall not be assessed.

The provisions of this subsection (1) are effective only if the referendum required by section 3 of this act on the creation of the commission is adopted.

(2) Subject to approval by referendum, the commission shall have the power and duty to increase the amount of the assessments as necessary to fulfill the purposes of this chapter.

(3) In determining the necessity for an assessment increase, the commission shall consider:

(a) The purpose of the commission;

(b) The extent and probable cost of required research, promotion, and advertising;

(c) The extent of public convenience, interest, and necessity; and

(d) The expected revenue from the increased assessment.

(4) The increase in assessment shall not become effective until approved by a majority of the affected persons voting in a referendum conducted by the commission. The referendum must be approved by:

(a) Either fifty-one percent of the apiarists and brokers representing sixty-six percent of the colonies registered in Washington in the twelve months preceding voting; or

(b) Sixty-six percent of the apiarists and brokers representing fifty-one percent of the colonies registered in Washington in the twelve months preceding voting; and

(c) Either fifty-one percent of manufacturers, processors, and first handlers representing sixty-six percent of industry products sold in Washington by its residents; or

(d) Sixty-six percent of manufacturers, processors, and first handlers representing fifty-one percent of industry products sold in Washington by its residents.

NEW SECTION. Sec. 15. (1) All assessments shall be collected by the commission on a quarterly basis or as otherwise determined by the commission.

(2) The commission shall create a local fund in a local financial institution approved by the director and shall deposit therein, each day, all moneys received by the commission except an amount for petty cash as fixed by commission regulations. Moneys in the fund shall only be expended for the purposes of this chapter. Moneys in the fund are not subject to appropriation.

(3) The commission fund is authorized to receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(4) If an affected person fails to remit any assessment, such assessment plus interest at the rate of one percent per month from the due date shall constitute a personal debt of the person assessed or who otherwise owes the assessment and shall be due and payable within thirty days from the date it becomes first due the commission. In the event of failure of the person to pay due and payable assessments, the commission may bring civil action against the person in a state court of competent jurisdiction for collection thereof, together with any reasonable costs including attorneys' fees. The action shall be tried and judgment rendered as in any other cause of action for debt due and payable. This provision is in addition to the penalty section contained in section 22 of this act.

NEW SECTION. Sec. 16. A person shall be entitled to a refund of assessed money held by the commission fund when it has been determined by the commission that the affected person was assessed and made payment in error.

NEW SECTION. Sec. 17. (1) Each apiarist and broker shall keep accurate records of the number of colonies owned or operated during each calendar year.

(2) Each manufacturer shall keep accurate records of gross sales of industry products or manufactured goods sold in the state of Washington.

(3) Each processor shall keep accurate records of the pounds of honey sold in the state of Washington.

(4) Each first-handler shall keep accurate records of the industry products sold in the state of Washington.

(5) The records shall contain information required by the commission and shall be preserved for a period of five years.

(6) The records shall be made available for audit upon request of the commission or its agent, as authorized in sections 13 and 20 of this act.

NEW SECTION. Sec. 18. Each affected person shall, as required, file with the commission a return under oath on forms to be furnished by the commission, stating the information requested by the commission regarding the ownership, handling, processing, manufacturing, delivering, shipping, sale, and brokering of various honey bee industry products and activities as defined in section 2 of this act. The report shall cover the period or periods of time prescribed by the commission.

NEW SECTION. Sec. 19. The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington state honey bee commission.

NEW SECTION. Sec. 20. The commission through its agents may audit the records of any affected person for the purpose of enforcing the provisions of this chapter. The commission must first notify the affected person of their intention to audit and may request supporting documents of the affected person regarding reports submitted on commission forms under section 18 of this act.

NEW SECTION. Sec. 21. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All salaries, expenses, and liabilities incurred by persons employed or contracting under this chapter for the commission shall be limited to, and payable only from, the funds collected hereunder.

NEW SECTION. Sec. 22. Any person who violates or aids in the violation of any provision of this chapter or any rule or regulation of the commission shall be guilty of a misdemeanor.

NEW SECTION. Sec. 23. (1) Any prosecution brought under this chapter may be instituted 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.

(2) The commission is hereby vested with the authority to utilize the services of the local prosecuting attorneys or special prosecutors as agreed upon by the commission and the local prosecutor for purposes of carrying out the prosecution of cases brought under this chapter.

(3) The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter, and the rules and regulations of the commission issued hereunder, and to prevent and enjoin and restrain violations thereof.

NEW SECTION. Sec. 24. This chapter shall be liberally construed to effectuate the policies and purpose set forth herein.

NEW SECTION. Sec. 25. In the seventh year following the inception of the commission, a referendum shall be conducted by the department of agriculture to determine if the commission is still desired by the beekeeping industry in Washington. The commission shall continue if the director finds that affected apiarists and brokers voting in a referendum conducted as for an assessment increase in section 14(4) of this act voted in favor of such continuance, otherwise it shall be terminated or suspended as in section 26 of this act.

NEW SECTION. Sec. 26. The commission shall be terminated or suspended if the director finds that apiarists and brokers voting in a referendum conducted as for an assessment increase in section 14(4) of this act voted in favor of such termination or suspension. A referendum may be called by a majority of the commission or by twenty percent of the resident

affected persons representing twenty percent of the colonies and industry products sold in Washington.

Any moneys in the treasury at the time of an affirmative termination or suspension vote shall first be used to effect all acts associated with the termination or suspension procedures and liquidation of the affairs of the commission.

Any residual funds not necessary to defray the expenses of termination or suspension of the commission shall be turned over to Washington State University to be used in conducting research on the honey bee *Apis mellifera*.

NEW SECTION. Sec. 27. 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. Sections 1 through 27 of this act shall constitute a new chapter in Title 15 RCW.

Passed the House February 8, 1989.

Passed the Senate March 29, 1989.

Approved by the Governor April 4, 1989.

Filed in Office of Secretary of State April 4, 1989.

CHAPTER 6

[House Bill No. 1912]

FINGERPRINTING OF JUVENILE OFFENDERS—AUTHORIZATION BY COURT ADMINISTRATOR

AN ACT Relating to fingerprinting; amending RCW 10.98.050; and reenacting and amending RCW 43.43.735.

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

Sec. 1. Section 5, chapter 17, Laws of 1984 as last amended by section 6, chapter 450, Laws of 1987 and RCW 10.98.050 are each amended to read as follows:

(1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the

case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney.

Sec. 2. Section 8, chapter 152, Laws of 1972 ex. sess. as last amended by section 2, chapter 450, Laws of 1987 and by section 12, chapter 486, Laws of 1987 and RCW 43.43.735 are each reenacted and amended to read as follows:

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor (~~:- PROVIDED, That an~~). (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested, or all persons who are the subject of dependency record information.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section, or all persons who are the subject of dependency record information, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged.

(4) It shall be the duty of the department of licensing or the court having jurisdiction over the dependency action to cause the fingerprinting of all persons who are the subject of a disciplinary board final decision or dependency record information or to obtain other necessary identifying information, as specified by the section in rules ~~((promulgated pursuant to))~~ adopted under chapter ((34.04)) 34.05 RCW to carry out the provisions of this subsection.

(5) The court having jurisdiction over the dependency action may obtain and record, in addition to fingerprints, the photographs, palmprints, soleprints, toeprints, or any other identification data of all persons who are

the subject of dependency record information, when in the discretion of the court it is necessary for proper identification of the person.

Passed the House March 8, 1989.

Passed the Senate March 29, 1989.

Approved by the Governor April 4, 1989.

Filed in Office of Secretary of State April 4, 1989.

CHAPTER 7

[Senate Bill No. 5030]

WRIT OF CERTIORARI—FACTUAL DETERMINATIONS

AN ACT Relating to the writ of certiorari; and amending RCW 7.16.120.

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

Sec. 1. Section 12, chapter 65, Laws of 1895 as amended by section 6, chapter 51, Laws of 1957 and RCW 7.16.120 are each amended to read as follows:

The questions involving the merits to be determined by the court upon the hearing are:

(1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.

(2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.

(3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.

(4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.

(5) ~~((If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, as would be set aside by the court, as against the weight of evidence))~~ Whether the factual determinations were supported by substantial evidence.

Passed the Senate March 6, 1989.

Passed the House March 27, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 8

[Senate Bill No. 5031]

REVISED CODE OF WASHINGTON—CORRECTION OR AMENDMENT OF
INTERNAL REFERENCES

AN ACT Relating to the correction or amendment of internal references in the Revised Code of Washington; and amending RCW 9.46.293, 19.52.900, and 69.50.408.

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

Sec. 1. Section 13, chapter 166, Laws of 1975 1st ex. sess. and RCW 9.46.293 are each amended to read as follows:

Any fishing derby, defined under ~~((the provisions of section 1(7) of this 1975 amendatory act))~~ RCW 9.46.0229, shall not be subject to any other provisions of this ~~((1975 amendatory act))~~ chapter or to any rules or regulations of the commission.

Sec. 2. Section 10, chapter 78, Laws of 1981 and RCW 19.52.900 are each amended to read as follows:

~~((Sections 1 through 8 of this act))~~ Chapter 78, Laws of 1981 shall apply only to loans or forbearances or transactions which are entered into after May 8, 1981, or to existing loans or forbearances, contracts or agreements which were not primarily for personal, family, or household use to which there is an addition to the principal amount of the credit outstanding after May 8, 1981: PROVIDED, HOWEVER, That nothing in ~~((this act))~~ chapter 78, Laws of 1981 shall be construed as implying that agricultural or investment purposes are not already included within the meaning of "commercial or business purposes" as used in ~~((section 1, chapter 142, Laws of 1969 ex. sess. and))~~ RCW 19.52.080 as in effect prior to May 8, 1981.

Sec. 3. Section 69.50.408, chapter 308, Laws of 1971 ex. sess. and RCW 69.50.408 are each amended to read as follows:

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401~~((c))~~ (d).

Passed the Senate January 25, 1989.

Passed the House March 27, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 9

[Senate Bill No. 5032]

REVISED CODE OF WASHINGTON—REPEAL OF OBSOLETE SECTIONS

AN ACT Relating to the repeal of obsolete sections in the Revised Code of Washington; and repealing RCW 18.34.130, 18.36.136, 42.28.030, 42.28.035, 42.28.060, 42.28.070, 42.28.090, 43.31.370, 43.230.050, and 46.63.150.

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) Section 13, chapter 43, Laws of 1957, section 6, chapter 227, Laws of 1982 and RCW 18.34.130;

(2) Section 49, chapter 259, Laws of 1986, section 27, chapter 150, Laws of 1987 and RCW 18.36.136;

(3) Section 3, page 473, Laws of 1890, section 1, chapter 85, Laws of 1975 1st ex. sess., section 1, chapter 314, Laws of 1981, section 5, chapter 44, Laws of 1985 and RCW 42.28.030;

(4) Section 5, chapter 85, Laws of 1975 1st ex. sess., section 6, chapter 44, Laws of 1985 and RCW 42.28.035;

(5) Section 5, page 474, Laws of 1890, section 2, chapter 85, Laws of 1975 1st ex. sess., section 7, chapter 44, Laws of 1985 and RCW 42.28.060;

(6) Section 6, page 474, Laws of 1890, section 3, chapter 85, Laws of 1975 1st ex. sess., section 8, chapter 44, Laws of 1985 and RCW 42.28.070;

(7) Section 1, chapter 56, Laws of 1907, section 7, chapter 51, Laws of 1951, section 4, chapter 85, Laws of 1975 1st ex. sess., section 1, chapter 214, Laws of 1983, section 9, chapter 44, Laws of 1985 and RCW 42.28.090;

(8) Section 4, chapter 221, Laws of 1967, section 9, chapter 175, Laws of 1984, section 2, chapter 159, Laws of 1985 and RCW 43.31.370;

(9) Section 6, chapter 286, Laws of 1984 and RCW 43.230.050; and

(10) Section 13, chapter 128, Laws of 1980, section 8, chapter 330, Laws of 1981 and RCW 46.63.150.

Passed the Senate January 25, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 10

[Substitute Senate Bill No. 5034]

REVISED CODE OF WASHINGTON—RECONCILIATION OF DOUBLE AMENDMENTS OR REPEALS

AN ACT Relating to the reconciliation of double amendments or repeals in the Revised Code of Washington; amending RCW 18.57.085; amending section 143, chapter 30, Laws of 1985 (uncodified); amending section 1, chapter 114, Laws of 1979 ex. sess. (uncodified); reenacting RCW 5.60.060, 11.98.029, 29.13.060, 43.03.010, and 48.24.060; reenacting and amending RCW 48.46.060; creating a new section; and repealing RCW 8.25.170 and 39.56.010.

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

Sec. 1. Section 294, page 187, Laws of 1854 as last amended by section 1501, chapter 212, Laws of 1987 and by section 11, chapter 439, Laws of 1987 and RCW 5.60.060 are each reenacted to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

NEW SECTION. Sec. 2. It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect.

Sec. 3. Section 43, chapter 30, Laws of 1985 and RCW 11.98.029 are each reenacted to read as follows:

Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041.

Sec. 4. Section 143, chapter 30, Laws of 1985 (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed:

(1) Section 11.16.050, chapter 145, Laws of 1965, section 4, chapter 168, Laws of 1967 and RCW 11.16.050;

~~((2))~~ ~~((Section 4, chapter 124, Laws of 1959 and RCW 11.98.029; (3)))~~ Section 8, chapter 88, Laws of 1967 ex. sess., section 33, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.010;

~~((4))~~ (3) Section 9, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.020;

~~((5))~~ (4) Section 10, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.030;

~~((6))~~ (5) Section 11, chapter 88, Laws of 1967 ex. sess., section 34, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.040;

~~((7))~~ (6) Section 12, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.050;

~~((8))~~ (7) Section 13, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.060;

~~((9))~~ (8) Section 14, chapter 88, Laws of 1967 ex. sess., section 35, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.070;

~~((10))~~ (9) Section 15, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.080;

~~((11))~~ (10) Section 16, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.090;

~~((12))~~ (11) Section 17, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.100;

~~((13))~~ (12) Section 18, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.110;

~~((14))~~ (13) Section 19, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.900; and

~~((15))~~ (14) Section 30.24.060, chapter 33, Laws of 1955, section 1, chapter 209, Laws of 1967 and RCW 30.24.060.

Sec. 5. Section 3, chapter 227, Laws of 1971 ex. sess. as amended by section 14, chapter 117, Laws of 1979 and RCW 18.57.085 are each amended to read as follows:

The board may, in its discretion, waive ~~((the examination in basic sciences required under chapter 43.74 RCW, and))~~ the examination in clinical subjects required under RCW 18.57.080 as now or hereafter amended, of persons applying for a license to practice osteopathic medicine and surgery if, in the sole discretion of the board, the applicant has successfully passed an examination of equal or greater difficulty than the examination being waived.

Sec. 6. Section 1, chapter 114, Laws of 1979 ex. sess. (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed:

~~((Section 3, chapter 227, Laws of 1971 ex. sess. and RCW 18.57.085;~~

~~(2))~~ (2) Section 4, chapter 227, Laws of 1971 ex. sess. and RCW 18.71.075;

~~((3))~~ (2) Section 43.74.005, chapter 8, Laws of 1965 and RCW 43.74.005;

~~((4))~~ (3) Section 43.74.010, chapter 8, Laws of 1965, section 22, chapter 77, Laws of 1973 and RCW 43.74.010;

~~((5))~~ (4) Section 43.74.015, chapter 8, Laws of 1965, section 6, chapter 188, Laws of 1967, section 123, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 43.74.015;

~~((6))~~ (5) Section 43.74.020, chapter 8, Laws of 1965 and RCW 43.74.020;

~~((7))~~ (6) Section 43.74.025, chapter 8, Laws of 1965 and RCW 43.74.025;

~~((8))~~ (7) Section 43.74.035, chapter 8, Laws of 1965 and RCW 43.74.035;

~~((9))~~ (8) Section 2, chapter 227, Laws of 1971 ex. sess., section 23, chapter 77, Laws of 1973 and RCW 43.74.037;

~~((10))~~ (9) Section 43.74.040, chapter 8, Laws of 1965, section 24, chapter 77, Laws of 1973 and RCW 43.74.040;

~~((11))~~ (10) Section 43.74.050, chapter 8, Laws of 1965 and RCW 43.74.050;

~~((12))~~ (11) Section 43.74.060, chapter 8, Laws of 1965 and RCW 43.74.060;

~~((+3))~~ (12) Section 43.74.065, chapter 8, Laws of 1965 and RCW 43.74.065;

~~((+4))~~ (13) Section 43.74.075, chapter 8, Laws of 1965 and RCW 43.74.075;

~~((+5))~~ (14) Section 43.74.080, chapter 8, Laws of 1965, section 25, chapter 77, Laws of 1973 and RCW 43.74.080;

~~((+6))~~ (15) Section 1, chapter 227, Laws of 1971 ex. sess., section 26, chapter 77, Laws of 1973 and RCW 43.74.085;

~~((+7))~~ (16) Section 43.74.090, chapter 8, Laws of 1965 and RCW 43.74.090; and

~~((+8))~~ (17) Section 43.74.900, chapter 8, Laws of 1965 and RCW 43.74.900.

Sec. 7. Section 29.13.060, chapter 9, Laws of 1965 as amended by section 15, chapter 126, Laws of 1979 ex. sess. and by section 11, chapter 183, Laws of 1979 ex. sess. and RCW 29.13.060 are each reenacted to read as follows:

In class AA and class A counties, first class school districts containing a city of the first class shall hold their elections biennially as provided in RCW 29.13.020.

Except as provided in RCW 28A.57.313, the directors to be elected shall be elected for terms of six years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Sec. 8. Section 43.03.010, chapter 8, Laws of 1965 as last amended by section 8, chapter 155, Laws of 1986 and by section 1, chapter 161, Laws of 1986 and RCW 43.03.010 are each reenacted to read as follows:

The annual salaries of the following named state elected officials shall be prescribed by the Washington citizens' commission on salaries for elected officials: Governor; lieutenant governor: PROVIDED, That in arriving at the annual salary of the lieutenant governor the commission shall prescribe a fixed amount plus a sum equal to 1/260th of the difference between the annual salary of the lieutenant governor and the annual salary of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor; secretary of state; state treasurer; state auditor; attorney general; superintendent of public instruction; commissioner of public lands; and state insurance commissioner. Members of the legislature shall receive for their service per annum the amount prescribed by the Washington citizens' commission on salaries for elected officials; and in addition, reimbursement for mileage for travel to and from legislative sessions as provided in RCW 43.03.060.

Sec. 9. Section .24.06, chapter 79, Laws of 1947 as last amended by section 5, chapter 152, Laws of 1973 1st ex. sess. and by section 8, chapter

163, Laws of 1973 1st ex. sess. and RCW 48.24.060 are each reenacted to read as follows:

The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them.

Sec. 10. Section 7, chapter 290, Laws of 1975 1st ex. sess. as last amended by section 2, chapter 283, Laws of 1985 and by section 2, chapter 320, Laws of 1985 and RCW 48.46.060 are each reenacted and amended to read as follows:

(1) Any health maintenance organization may enter into agreements with or for the benefit of persons or groups of persons, which require prepayment for health care services by or for such persons in consideration of the health maintenance organization providing health care services to such persons. Such activity is not subject to the laws relating to insurance if the health care services are rendered directly by the health maintenance organization or by any provider which has a contract or other arrangement with the health maintenance organization to render health services to enrolled participants.

(2) All forms of health maintenance agreements issued by the organization to enrolled participants or other marketing documents purporting to describe the organization's comprehensive health care services shall comply with such minimum standards as the commissioner deems reasonable and necessary in order to carry out the purposes and provisions of this chapter, and which fully inform enrolled participants of the health care services to which they are entitled, including any limitations or exclusions thereof, and such other rights, responsibilities and duties required of the contracting health maintenance organization.

(3) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and ~~((34.04))~~ 34.05 RCW, the commissioner may disapprove an agreement form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions or conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the agreement;

(b) If it has any title, heading, or other indication which is misleading;

(c) If purchase of health care services thereunder is being solicited by deceptive advertising;

(d) If the benefits provided therein are unreasonable in relation to the amount charged for the agreement;

(e) If it contains unreasonable restrictions on the treatment of patients;

(f) If it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter ~~((34.04))~~ 34.05 RCW; or

(g) If any ~~((contract))~~ agreement for health care services with any state agency, division, subdivision, board or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(4) No health maintenance organization authorized under this chapter shall cancel or fail to renew the enrollment on any basis of an enrolled participant or refuse to transfer an enrolled participant from a group to an individual basis for reasons relating solely to age, sex, race, or health status: PROVIDED HOWEVER, That nothing contained herein shall prevent

cancellation of an agreement with enrolled participants (a) who violate any published policies of the organization which have been approved by the commissioner, or (b) who are entitled to become eligible for medicare benefits and fail to enroll for a medicare supplement plan offered by the health maintenance organization and approved by the commissioner, or (c) for failure of such enrolled participant to pay the approved charge, including cost-sharing, required under such contract, or (d) for a material breach of the health maintenance agreement.

(5) No agreement form or amendment to an approved agreement form shall be used unless it is first filed with the commissioner.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) Section 13, chapter 236, Laws of 1969 ex. sess., section 1, chapter 9, Laws of 1971 ex. sess. and RCW 8.25.170; and

(2) Section 3, chapter 80, Laws of 1899, section 1, chapter 88, Laws of 1971 ex. sess., section 15, chapter 156, Laws of 1981 and RCW 39.56.010.

Passed the Senate January 25, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 11

[Senate Bill No. 5045]

REVISED CODE OF WASHINGTON—STATUTES AFFECTED BY VETO—
CORRECTION

AN ACT Relating to correction of statutes affected by vetoes by the governor; amending RCW 9A.56.220, 15.85.050, 19.120.010, 28A.04.178, 28A.58.098, 35.50.050, 35.97.020, 35A.40.210, 38.38.012, 41.04.525, 41.59.020, 42.22.040, 43.20A.360, 43.41.170, 43.81.030, 43.83B.220, 43.88.030, 44.42.040, 48.19.500, 48.19.501, 49.70.100, 53.31.040, 63.14.167, 70.22.050, 74.04.660, 74.21.030, 77.21.070, 77.21.080, 80.28.240, and 90.70.060; reenacting and amending RCW 42.17.310; and repealing RCW 43.230.050.

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

Sec. 1. Section 1, chapter 430, Laws of 1985 and RCW 9A.56.220 are each amended to read as follows:

(1) A person is guilty of theft of cable television services if:

(a) With intent to avoid payment of the lawful charge for any communication service of a cable system, he or she:

(i) Tamper with the equipment of the cable system, whether by mechanical, electrical, acoustical, or other means; or

(ii) Knowingly misrepresents a material fact; or

(iii) Uses any other artifice, trick, deception, code, or other device; and

(b) He or she wrongfully obtains cable communication services for himself or herself or another.

(2) RCW 9A.56.220 through 9A.56.250 do not apply to the interception or receipt by any individual or the assisting (including the manufacture or sale), of such interception or receipt of any satellite-transmitted programming for private use.

~~((4))~~ (3) Theft of cable television services is a gross misdemeanor.

Sec. 2. Section 4, chapter 457, Laws of 1985 and RCW 15.85.050 are each amended to read as follows:

The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. ~~((The department shall consult with the advisory council in developing such a program.))~~

Sec. 3. Section 1, chapter 320, Laws of 1986 and RCW 19.120.010 are each amended to read as follows:

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

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means any person, firm, or corporation who controls or is controlled by any motor fuel refiner-supplier, and includes any subsidiary or affiliated corporation in which the motor fuel refiner-supplier or its shareholders, officers, agents, or employees hold or control more than twenty-five percent of the voting shares.

(3) "Community interest" means a continuing financial interest between the motor fuel refiner-supplier and motor fuel retailer in the operation of the franchise business.

~~((5))~~ (4) "Motor fuel" means gasoline or diesel fuel of a type distributed for use in self-propelled motor vehicles and includes gasohol.

~~((6))~~ (5) "Motor fuel franchise" means any oral or written contract, either expressed or implied, between a motor fuel refiner-supplier and motor fuel retailer under which the motor fuel retailer is supplied motor fuel for resale to the public under a trademark owned or controlled by the motor fuel refiner-supplier or for sale on commission or for a fee to the public, or any agreements between a motor fuel refiner-supplier and motor fuel retailer under which the retailer is permitted to occupy premises owned, leased, or controlled by the refiner-supplier for the purpose of engaging in the retail sale of motor fuel under a trademark owned or controlled by the motor fuel refiner-supplier supplied by the motor fuel refiner-supplier.

~~((7))~~ (6) "Motor fuel refiner-supplier" means any person, firm, or corporation, including any affiliate of the person, firm, or corporation, engaged in the refining of crude oil into petroleum who supplies motor fuel for sale, consignment, or distribution through retail outlets.

~~((8))~~ (7) "Motor fuel retailer" means a person, firm, or corporation that resells motor fuel entirely at one or more retail motor fuel outlets pursuant to a motor fuel franchise entered into with a refiner-supplier.

~~((9))~~ (8) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

~~((10))~~ (9) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

~~((11))~~ (10) "Price" means the net purchase price, after adjustment for commission, brokerage, rebate, discount, services or facilities furnished, or other such adjustment.

~~((12))~~ (11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

~~((13))~~ (12) "Retail motor fuel outlet" means any location where motor fuel is distributed for purposes other than resale.

~~((14))~~ (13) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

~~((15))~~ (14) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

Sec. 4. Section 226, chapter 525, Laws of 1987 and RCW 28A.04.178 are each amended to read as follows:

The state board of education and the office of the superintendent of public instruction shall review the provisions of the interstate agreement on qualifications of educational personnel under chapter 28A.93 RCW, and advise the governor and the legislature on which interstate reciprocity provisions will require amendment to be consistent with ~~((sections 212 through 216 and 220 through 224 of this act))~~ RCW 28A.04.170, 28A.04.172, 28A.04.174, 28A.70.040, and 28A.70.042 by January 1, 1992.

Sec. 5. Section 1, chapter 10, Laws of 1982 1st ex. sess. and RCW 28A.58.098 are each amended to read as follows:

(1) No school district board of directors or administrators may:

(a) Increase an employee's salary or compensation to include a payment in lieu of providing a fringe benefit; or

~~((c))~~ (b) Allow any payment to an employee which is partially or fully conditioned on the termination or retirement of the employee, except as provided in subsection (2) of this section.

(2) A school district board of directors may compensate an employee for termination of the employee's contract in accordance with the termination provisions of the contract. If no such provisions exist the compensation must be reasonable based on the proportion of the uncompleted contract. Compensation received under this subsection shall not be included for the

purposes of computing a retirement allowance under any public retirement system in this state.

(3) Provisions of any contract in force on March 27, 1982, which conflict with the requirements of this section shall continue in effect until contract expiration. After expiration, any new contract including any renewal, extension, amendment or modification of an existing contract executed between the parties shall be consistent with this section.

Sec. 6. Section 35.50.050, chapter 7, Laws of 1965 as amended by section 5, chapter 137, Laws of 1972 ex. sess. and RCW 35.50.050 are each amended to read as follows:

An action to collect a local improvement assessment or any installment thereof or to enforce the lien thereof whether brought by the city or town, or by any person having the right to bring such action must be commenced within ten years after the assessment becomes delinquent or within ten years after the last installment becomes delinquent, if the assessment is payable in installments: PROVIDED, That the time during which payment of principal is deferred as to economically disadvantaged property owners as provided for in RCW 35.43.250 (~~and in RCW 35.50.030~~) shall not be a part of the time limited for the commencement of action.

Sec. 7. Section 1, chapter 216, Laws of 1983 as amended by section 3, chapter 522, Laws of 1987 and RCW 35.97.020 are each amended to read as follows:

~~((2))~~ (1) Counties, cities, towns, irrigation districts which distribute electricity, sewer districts, water districts, port districts, and metropolitan municipal corporations are authorized pursuant to this chapter to establish heating systems and supply heating services from Washington's heat sources.

~~((4))~~ (2) Nothing in this chapter authorizes any municipality to generate, transmit, distribute, or sell electricity.

Sec. 8. Section 3, chapter 89, Laws of 1979 ex. sess. and RCW 35A-40.210 are each amended to read as follows:

Procedures for any public work or improvement contracts or purchases for code cities shall be governed by the following statutes, as indicated:

(1) For code cities of twenty thousand population or over, RCW 35-22.620(~~, as now or hereafter amended, and section 5 of this 1979 act~~); and

(2) For code cities under twenty thousand population; RCW 35.23-352(~~, as now or hereafter amended, and section 6 of this 1979 act~~).

Sec. 9. Section 3, chapter 220, Laws of 1963 and RCW 38.38.012 are each amended to read as follows:

~~((2))~~ No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

Sec. 10. Section 7, chapter 462, Laws of 1985 and RCW 41.04.525 are each amended to read as follows:

~~((2))~~) The disability leave supplement provided in RCW 41.04.510(3) shall not be considered salary or wages for personal services: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee.

Sec. 11. Section 3, chapter 288, Laws of 1975 1st ex. sess. and RCW 41.59.020 are each amended to read as follows:

As used in this chapter:

(1) The term "employee organization" means any organization, union, association, agency, committee, council, or group of any kind in which employees participate, and which exists for the purpose, in whole or in part, of collective bargaining with employers.

(2) The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget-making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: PROVIDED, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory.

(3) The term "commission" means the ~~((education))~~ public employment relations commission established by ~~((section 4 of this 1975 act: PROVIDED, That if the legislature creates another board, commission, or division of a state agency comprehensively assuming administrative responsibilities for labor relations or collective bargaining in the public sector; "commission" for the purposes of **this chapter shall mean such board, commission, or division as therein created))~~ RCW 41.58.010.

(4) The terms "employee" and "educational employee" means any certificated employee of a school district, except:

(a) The chief executive officer of the employer.

(b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business

manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term "educational employee".

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person.

(d) Unless included within a bargaining unit pursuant to RCW 41.59-.080, any supervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(e) Unless included within a bargaining unit pursuant to RCW 41.59-.080, principals and assistant principals in school districts.

(5) The term "employer" means any school district.

(6) The term "exclusive bargaining representative" means any employee organization which has:

(a) Been selected or designated pursuant to the provisions of this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Prior to January 1, 1976, been recognized under a predecessor statute as the representative of the employees in an appropriate collective bargaining or negotiations unit.

(7) The term "person" means one or more individuals, organizations, unions, associations, partnerships, corporations, boards, committees, commissions, agencies, or other entities, or their representatives.

(8) The term "nonsupervisory employee" means all educational employees other than principals, assistant principals and supervisors.

Sec. 12. Section 2, chapter 107, Laws of 1987, section 1, chapter 337, Laws of 1987, section 16, chapter 370, Laws of 1987, section 1, chapter 404, Laws of 1987, and section 10, chapter 411, Laws of 1987 and RCW 42.17.310 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: PROVIDED, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: PROVIDED, FURTHER, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

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

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) ~~((Except as provided under section 2 of this 1987 act [1987 c 404 § 2],))~~ All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 13. Section 4, chapter 320, Laws of 1959 and RCW 42.22.040 are each amended to read as follows:

No officer or employee of a state agency, legislative employee, or other public officer shall use his position to secure special privileges or exemptions for himself or others.

(1) No legislative employee shall directly or indirectly give or receive or agree to receive any compensation, gift, reward, or gratuity from any source except the state of Washington for any matter connected with or related to the legislative process unless otherwise provided for by law.

(2) No officer or employee of a state agency, or other public officer shall, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from any source except the state of Washington, its political subdivisions, or employing municipal government, for any matter connected with or related to his services as such an officer or employee unless otherwise provided for by law.

~~((4))~~ (3) No person who has served as an officer or employee of a state agency shall, within a period of two years after the termination of such service or employment, appear before such agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment.

~~((5))~~ (4) No officer or employee of a state agency, legislative employee, or public official shall accept employment or engage in any business or professional activity which he might reasonably expect would require or

induce him to disclose confidential information acquired by him by reason of his official position.

~~((6))~~ (5) No officer or employee of a state agency, legislative employee, or public official shall disclose confidential information gained by reason of his official position nor shall he otherwise use such information for his personal gain or benefit.

~~((7))~~ (6) No officer or employee of a state agency shall transact any business in his official capacity with any business entity of which he is an officer, agent, employee, or member, or in which he owns an interest.

~~((8))~~ (7) The head of each state agency shall publish for the guidance of its officers and employees a code of public service ethics appropriate to the specific needs of each such agency.

~~((9))~~ (8) No officer or employee of a state agency nor any firm, corporation, or association, or other business entity in which such officer or employee of a state agency is a member, agent, officer, or employee, or in which he owns a controlling interest, or any interest acquired after the acceptance of state employment, accept any gratuity or funds from any employee or shall sell goods or services to any person, firm, corporation, or association which is licensed by or regulated in any manner by the state agency in which such officer or employee serves.

Sec. 14. Section 2, chapter 189, Laws of 1971 ex. sess. as last amended by section 1, chapter 259, Laws of 1984 and RCW 43.20A.360 are each amended to read as follows:

(1) The secretary is hereby authorized to appoint such advisory committees or councils as may be required by any federal legislation as a condition to the receipt of federal funds by the department. The secretary may appoint state-wide committees or councils in the following subject areas: (a) Health facilities; (b) radiation control; (c) children and youth services; (d) blind services; (e) medical and health care; (f) drug abuse and alcoholism; (g) social services; (h) economic services; (i) vocational services; (j) rehabilitative services; (k) public health services; and on such other subject matters as are or come within the department's responsibilities. The secretary shall appoint committees or councils advisory to the department in each service delivery region to be designated by the secretary. The state-wide and the regional councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the secretary in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms.

~~((3))~~ (2) Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Members of regional advisory committees may, in the discretion of the secretary, be paid the same travel expenses as set forth above.

Sec. 15. Section 3, chapter 325, Laws of 1986 and RCW 43.41.170 are each amended to read as follows:

~~((In developing the guidelines))~~ The office of financial management shall ensure that to the extent possible the budget process shall allow state agencies implementing energy conservation to retain the resulting cost savings for other purposes, including further energy conservation~~((and))~~.

Sec. 16. Section 3, chapter 463, Laws of 1985 and RCW 43.81.030 are each amended to read as follows:

(1) No rent may be charged to persons living in facilities provided under RCW 43.81.020(1). Such employees shall pay the costs of utilities associated with the living facility.

~~((4))~~ (2) Any person occupying state-owned or leased living facilities shall do so with the understanding that he or she assumes custodial house-keeping responsibility as directed by the agency. Such responsibility shall not include maintenance, repairs, or improvements to the facilities. An occupant of a state-owned or leased facility is liable for damages to the facility in excess of normal wear and tear.

Sec. 17. Section 5, chapter 295, Laws of 1975 1st ex. sess. and RCW 43.83B.220 are each amended to read as follows:

In addition to the powers granted by ~~((sections 2 and 3 of this act))~~ RCW 43.83B.210, the director of the department of ecology or his designee is authorized to make contractual agreements in accordance with provisions of this chapter on behalf of the state of Washington. Contractual agreements shall include provisions to secure such loans, and shall assure the proper and timely payment of said loans or loan portions of combination loans and grants.

Sec. 18. Section 2, chapter 502, Laws of 1987 and RCW 43.88.030 are each amended to read as follows:

(1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period and shall describe in connection therewith the important features of the budget. The message shall set forth the reasons for salient changes from the previous fiscal period in

expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period based upon the estimated revenues as approved by the economic and revenue forecast council for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document. However, the estimated revenues for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues must be set forth in the budget document. The governor may additionally submit, as an appendix to each agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, activity and object; and

(f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

~~((f))~~ (g) Common school expenditures on a fiscal-year basis.

(3) A separate budget document or schedule may be submitted consisting of:

(a) Expenditures incident to current or pending capital projects and to proposed new capital projects, relating the respective amounts proposed to be raised therefor by appropriations in the budget and the respective amounts proposed to be raised therefor by the issuance of bonds during the fiscal period;

(b) A capital program consisting of proposed capital projects for at least the two fiscal periods succeeding the next fiscal period. The capital program shall include for each proposed project a statement of the reason or purpose for the project along with an estimate of its cost;

(c) Such other information bearing upon capital projects as the governor shall deem to be useful to the legislature;

(d) Such other information relating to capital improvement projects as the legislature may direct by law or concurrent resolution.

(4) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session.

Sec. 19. Section 4, chapter 173, Laws of 1980 and RCW 44.42.040 are each amended to read as follows:

(1) There is established a special fund in the state treasury to be known as the capitol arts fund, which shall be used to help finance the creation, acquisition, and installation of works of art for the state legislative building in accordance with the provisions of RCW 44.42.050. Under the direction of the joint legislative arts committee, the state treasurer may receive moneys for this fund, including gifts, grants, donations, and bequests, from any person or persons interested in making a contribution or contributions for this purpose. The legislative arts committee may refuse to accept such contributions. The committee may accept or reject any donations of art objects or other personal property. Such objects, and other property if

appropriate, shall be held in the custody of the state capitol historical museum. Donations of real property may be accepted or rejected by the committee. At the request of the committee, the department of general administration shall manage or sell any real property donated for the purposes of this chapter. Proceeds from the sale or management of real property shall be deposited in the capitol arts fund, except that expenses of the department shall be reimbursed from the proceeds. No moneys may be expended from the fund without the approval of the joint legislative arts committee.

~~((3))~~ (2) The state treasurer shall report to the legislature no later than January 31st of each even-numbered year the status of funds and the expenditures for works of art during the previous two-year period.

~~((4))~~ (3) Any moneys remaining in the capitol arts fund after the works of art have been installed may be used in any way that the joint legislative arts committee and legislature deem appropriate to enhance the appearance of the legislative building and the state's art collection.

Sec. 20. Section 1, chapter 310, Laws of 1987 and RCW 48.19.500 are each amended to read as follows:

Due consideration in making rates for motor vehicle insurance shall be given to:

~~((1))~~ (1) any anticipated change in losses that may be attributable to the use of seat belts, child restraints, and other lifesaving devices. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

Sec. 21. Section 1, chapter 320, Laws of 1987 and RCW 48.19.501 are each amended to read as follows:

Due consideration in making rates for motor vehicle insurance shall be given to:

~~((2))~~ (1) Any anticipated change in losses that may be attributable to the use of properly installed and maintained anti-theft devices in the insured private passenger automobile. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

~~((3))~~ (2) Any anticipated change in losses that may be attributable to the use of lights and lighting devices that have been proven effective in increasing the visibility of motor vehicles during daytime or in poor visibility conditions and to the use of rear stop lights that have been proven effective in reducing rear-end collisions. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

~~((4))~~ (3) Any anticipated change in losses per vehicle covered that may be attributable to the fact that the insured has more vehicles covered under the policy than there are insured drivers in the same household. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

Sec. 22. Section 15, chapter 289, Laws of 1984 and RCW 49.70.100 are each amended to read as follows:

An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. ~~((If an employer has not complied with section 12 of this act, an employee shall have the right to refuse to work with a particular hazardous substance for which a request was made and not honored within the statutory time period without loss of pay or forfeit of any other privilege until the request is honored.))~~ This section shall not apply to employees of vessels while the employees are on the water.

Sec. 23. Section 4, chapter 276, Laws of 1986 and RCW 53.31.040 are each amended to read as follows:

(1) For the purpose of promoting international trade, export trading companies formed under this chapter may provide export services through:

(a) Holding and disposing of goods in international trade;

~~((c))~~ (b) Taking title to goods.

All such activities engaged in or pursued by an export trading company shall be charged for in accordance with the customs of the trade at competitive market rates.

(2) Nothing contained in this chapter may be construed to authorize an export trading company to own or operate directly or indirectly any business which provides freight-forwarding, insurance, foreign exchange, or warehousing services. Nothing contained in this chapter may be construed to permit an export trading company to engage in the business of transporting commodities by motor vehicle, barge, ship, or rail for compensation.

(3) (a) Proceedings to form a public corporation designated as an export trading company shall be initiated by a resolution of the board of commissioners of a port district adopting a charter for the corporation. The charter shall contain such provisions as are authorized by law and include provisions for a board of directors which shall conduct the affairs of the export trading company. The board of directors shall include no fewer than three nor more than five members, all appointed by the port district board of commissioners. Commissioners of the port shall be eligible to serve as members of the board and shall constitute a majority of the board of directors at all times. Unless a later date is specified, the resolution shall take effect on the thirtieth day after adoption. The corporation shall be deemed

formed for all purposes upon filing in the office of the secretary of state a certified copy of the effective resolution and the charter adopted by the resolution.

(b) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the corporation, the corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the resolution creating the corporation by the governing body. A copy of the resolution duly certified by the secretary of the port district commission shall be admissible in evidence in any suit, action, or proceeding.

(c) A corporation created by a port district pursuant to this chapter may be dissolved by the district if the corporation (i) has no property to administer, other than funds or property, if any, to be paid or transferred to the district by which it was established; and (ii) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the port district adopting a resolution providing for the dissolution.

(d) The creating port district may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of the corporation, including termination of the corporation if contracts entered into by the corporation are not impaired. Subject to any contractual obligations, any net earnings of the corporation shall inure only to the benefit of the creating port district. Upon dissolution of the corporation, all assets and title to all property owned by the corporation shall vest in the creating port district.

(4) A port district may contract with an export trading company to provide services on a reimbursement basis at current business rates to the export trading company, including but not limited to accounting, legal, clerical, technical, and other administrative services. Separate accounting records prepared according to generally accepted accounting principles shall be maintained by the export trading company.

(5) Any obligation of an export trading company shall not in any manner be an obligation of the port district nor a charge upon any revenues or property of the port district.

(6) An export trading company may borrow money or contract indebtedness and pledge, in whole or in part, any of its revenues or assets not subject to prior liens or pledges. An export trading company may not pledge any revenue or property of a port district or other municipal corporation and no port district or other municipal corporation may pledge its revenues or property to the payment thereof. An export trading company has no power to issue general obligation bonds, levy taxes, or exercise power of eminent domain.

Sec. 24. Section 11, chapter 280, Laws of 1984 and RCW 63.14.167 are each amended to read as follows:

(1) Pursuant to a lender credit card or financial institution credit card transaction in which a credit card has been used to obtain credit, the seller is a person other than the card issuer, and the seller accepts or allows a return of goods or forgiveness of a debit for services that were the subject of the sale, credit shall be applied to the obligor's account as provided by this section.

(2) Within seven working days after a transaction in which an obligor becomes entitled to credit, the seller shall transmit a statement to the card issuer through the normal channels established by the card issuer for the transmittal of such statements. The credit card issuer shall credit the obligor's account within three working days following receipt of a credit statement from the seller.

(3) The obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

~~((5))~~ (4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at intervals of not less than six months nor more than eighteen months, either to all cardholders or to each cardholder entitled to receive a periodic statement for any one billing cycle. The notice shall state that the obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

Sec. 25. Section 5, chapter 283, Laws of 1961 as amended by section 91, chapter 141, Laws of 1979 and RCW 70.22.050 are each amended to read as follows:

To carry out the purpose of this chapter, the secretary of social and health services may:

~~((2))~~ (1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

~~((3))~~ (2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

~~((4))~~ (3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

~~((5))~~ (4) Publish information or literature; and

~~((6))~~ (5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish.

Sec. 26. Section 6, chapter 6, Laws of 1981 1st ex. sess. as amended by section 3, chapter 335, Laws of 1985 and RCW 74.04.660 are each amended to read as follows:

The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall not be provided for more than two months of assistance in any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3) In determining eligibility for this program, the department shall consider all cash resources as being available to meet need.

(4) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section. Eligibility for this program does not automatically entitle a recipient to medical assistance. Eligibility standards and resource levels for this program shall be stricter than the standards for eligibility and resource levels for the aid to families with dependent children program.

~~((6))~~ (5) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program. If the receipt of federal funds would require a reduction of funds available to households not receiving aid to families with dependent children below the amount of state funds appropriated for this program, the department may operate a program utilizing only state funds unless the aid to families with dependent children additional requirement program is substantially reduced in scope.

~~((7))~~ (6) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program.

Sec. 27. Section 3, chapter 434, Laws of 1987 and RCW 74.21.030 are each amended to read as follows:

Unless the context requires to the contrary, the definitions in this section apply throughout this chapter.

(1) "Benchmark standard" is the basic monthly level of cash benefits, established according to family size, which equals the state's payment standard under the aid to families with dependent children program, plus an amount not less than the full cash equivalent of food stamps for which any family of such size would otherwise be eligible.

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

(3) "Enrollee" means the head(s) of household of a family eligible to receive financial assistance or other services under the family independence program.

(4) "Executive committee" or "committee" means the family independence program executive committee, authorized by and subject to the provisions of this chapter, to make policy recommendations to the legislature and develop procedure, program standards, data collection and information systems for family independence programs, including making budget allocations, setting incentive rates within appropriated funds, setting cost-sharing requirements for child care and medical services, and making related financial reports under chapter 43.88 RCW.

(5) "Family independence program services" include but are not limited to job readiness programs, job creation, employment, work programs, training, education, family planning services, development of a mentor program, income and medical support, parent education, child care, and training in family responsibility and family management skills, including appropriate financial counseling and training on management of finances and use of credit.

~~((7))~~ (6) "Food stamps" means the food purchase benefit available through the United States department of agriculture.

~~((8))~~ (7) "Gross income" means the total income of an enrollee from earnings, cash assistance, and incentive benefit payments.

~~((9))~~ (8) "Incentive benefit payments" means those additional benefits payable to enrollees due to their participation in education, training, or work programs.

~~((10))~~ (9) "Job-ready" is the status of an enrollee who is assessed as ready to enter job search activities on the basis of the enrollee's skills, experience, or participation in job and education activities in accordance with RCW 74.21.080.

~~((11))~~ (10) "Job readiness training" means that training necessary to enable enrollees to participate in job search or job training classes. It may include any or all of the following: Budgeting and financial counseling, time management, self-esteem building, expectations of the workplace (including appropriate dress and behavior on the job), goal setting, transportation logistics, and other preemployment skills.

~~((12))~~ (11) "Maximum income levels" are those levels of income and cash benefits, both benchmark and incentive, which the state establishes as the maximum level of total gross cash income for persons to continue to receive cash benefits.

~~((13))~~ (12) "Medical benefits" or "medicaid" are categorically or medically needy medical benefits provided in accordance with Title XIX of the federal social security act. Eligibility and scope of medical benefits under this chapter shall incorporate any hereinafter enacted changes in the medicaid program under Title XIX of the federal social security act.

~~((14))~~ (13) "Noncash benefits" includes benefits such as child care and medicaid where the family receives a service in lieu of a cash payment related to the purposes of the family independence program.

~~((15))~~ (14) "Payment standard" is equal to the standard of need or a lesser amount if rateable reductions or grant maximums are established by the legislature. Standard of need shall be based on periodic studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but there shall not be proration of any portion of assistance grants unless the amount of the payment standard is equal to the standard of need.

~~((17))~~ (15) "Subsidized employment" means employment for which the family independence program has provided the employer the financial resources, in whole or in part, to compensate an enrollee for the performance of work.

~~((18))~~ (16) "Unsubsidized employment" means employment for which the family independence program has not provided the employer the financial resources to compensate an enrollee for the performance of work.

Sec. 28. Section 3, chapter 8, Laws of 1983 1st ex. sess. as last amended by section 74, chapter 506, Laws of 1987 and RCW 77.21.070 are each amended to read as follows:

(1) Whenever a person is convicted of illegal killing or possession of wildlife listed in this subsection, the convicting court shall order the person to reimburse the state in the following amounts for each animal killed or possessed:

- (a) Moose, antelope, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission \$2,000
- (b) Elk, deer, black bear, and cougar \$1,000
- (c) Mountain caribou and grizzly bear \$5,000

~~((3))~~ (2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, and the payment of a fine. No court may establish bail for illegal possession of wildlife listed in subsection (1) in an amount less than the bail established for hunting during the closed season plus the reimbursement value of wildlife set forth in subsection (1).

~~((4))~~ (3) If two or more persons are convicted of illegally possessing wildlife listed in this section, the reimbursement amount shall be imposed upon them jointly and separately.

~~((5))~~ (4) The reimbursement amount provided in this section shall be imposed in addition to and regardless of any penalty, including fines, or costs, that is provided for violating any provision of Title 77 RCW. The reimbursement required by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or

deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

~~((6))~~ (5) A defaulted reimbursement or any installment payment thereof may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

Sec. 29. Section 75, chapter 506, Laws of 1987 and RCW 77.21.080 are each amended to read as follows:

The state wildlife conservation reward fund is established in the custody of the state treasurer. The director shall deposit in the fund all moneys designated to be placed in the fund (~~(under RCW 77.21.070(2) and otherwise designated)~~) by rule of the director. Moneys in the fund shall be spent to provide rewards to persons informing the department about violations of this title or rules adopted pursuant to this title. Disbursements from the fund shall be on the authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursement.

~~((The amount of any reward shall not exceed the amount specified in RCW 77.21.070(2).))~~

Sec. 30. Section 1, chapter 427, Laws of 1985 and RCW 80.28.240 are each amended to read as follows:

(1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

~~((4))~~ (3) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

~~((5))~~ (4) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.

Sec. 31. Section 8, chapter 451, Laws of 1985 and RCW 90.70.060 are each amended to read as follows:

The plan adopted by the authority shall be a positive document prescribing the needed actions for the maintenance and enhancement of Puget Sound water quality. The plan shall address all the waters of Puget Sound, the Strait of Juan de Fuca, and, to the extent that they affect water quality in Puget Sound, all waters flowing into Puget Sound, and adjacent lands. The authority may define specific geographic boundaries within which the plan applies. The plan shall coordinate and incorporate existing planning and research efforts of state agencies and local government related to Puget Sound, and shall avoid duplication of existing efforts. The plan shall include:

(1) A statement of the goals and objectives for long and short-term management of the water quality of Puget Sound;

(2) A resource assessment which identifies critically sensitive areas, key characteristics, and other factors which lead to an understanding of Puget Sound as an ecosystem;

(3) Demographic information and assessment as relates to future water quality impacts on Puget Sound;

(4) An identification and legal analysis of all existing laws governing actions of government entities which may affect water quality management of Puget Sound, the interrelationships of those laws, and the effect of those laws on implementation of the provisions of the plan;

(5) Review and assessment of existing criteria and guidelines for governmental activities affecting Puget Sound's resources, including shoreline resources, aquatic resources, associated watersheds, recreational resources and commercial resources;

(6) Identification of research needs and priorities;

(7) Recommendations for guidelines, standards, and timetables for protection and clean-up activities and the establishment of priorities for major clean-up investments and nonpoint source management, and the projected costs of such priorities;

(8) A procedure assuring local government initiated planning for Puget Sound water quality protection;

(9) Ways to better coordinate federal, state, and local planning and management activities affecting Puget Sound's water quality;

(10) Public involvement strategies, including household hazardous waste education, community clean-up efforts, and public participation in developing and implementing the plan;

(11) Recommendations on protecting, preserving and, where possible, restoring wetlands and wildlife habitat and shellfish beds throughout Puget Sound;

(12) Recommendations for a comprehensive water quality and sediment monitoring program;

(13) Analysis of current industrial pretreatment programs for toxic wastes, and procedures and enforcement measures needed to enhance them;

(14) Recommendations for a program of dredge spoil disposal, including interim measures for disposal and storage of dredge spoil material from or into Puget Sound;

(15) Definition of major public actions subject to review and comment by the authority because of a significant impact on Puget Sound water quality and related resources, and development of criteria for review thereof;

(16) Recommendations for implementation mechanisms to be used by state and local government agencies;

(17) Standards and procedures for reporting progress by state and local governments in the implementation of the plan;

~~((19))~~ (18) An analysis of resource requirements and funding mechanisms for updating of the plan and plan implementation; and

~~((20))~~ (19) Legislation needed to assure plan implementation.

The authority shall circulate and receive comments on drafts of the plan mandated herein, and keep a record of all relevant comments made at public hearings and in writing. These records should be made easily available to interested persons.

NEW SECTION. Sec. 32. Section 6, chapter 286, Laws of 1984 and RCW 43.230.050 are each repealed.

NEW SECTION. Sec. 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate January 25, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 12

[Senate Bill No. 5046]

REVISED CODE OF WASHINGTON—GENDER-SPECIFIC LANGUAGE— ELIMINATION

AN ACT Relating to eliminating gender-specific language; and amending RCW 7.68-.010, 7.68.070, 19.29.010, 28B.20.450, 28B.20.454, 39.12.010, 39.12.020, 39.12.021, 39.12.030, 39.12.060, 39.12.042, 39.28.020, 41.26.270, 43.22.210, 49.24.270, 49.52.030, 51.36.060, 59.18-.150, 70.89.050, 78.40.181, 78.40.262, 78.40.345, 78.40.405, 78.40.672, 78.40.693, 78.40.741, 78.40.783, and 78.40.786.

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

Sec. 1. Section 1, chapter 122, Laws of 1973 1st ex. sess. as amended by section 1, chapter 302, Laws of 1977 ex. sess. and RCW 7.68.010 are each amended to read as follows:

It is the intent of the legislature of the state of Washington to provide a method of compensating and assisting innocent victims of criminal acts who suffer bodily injury or death as a consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured (~~(workmen)~~) workers under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter.

Sec. 2. Section 7, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 8, chapter 281, Laws of 1987 and RCW 7.68.070 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51-.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or his or her family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations, and procedures applicable to a (~~(workman)~~) worker as contained in

RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim;

(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 ((workman)) worker and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the maximum cost used by the department of social and health services for the funeral and burial of a deceased indigent person under chapter 74.08 RCW 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 him or her or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable

under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: **PROVIDED**, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: **PROVIDED**, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of ~~((workmen))~~ workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030. 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 fifteen 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 twenty 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 ten 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.

Sec. 3. Section 1, chapter 130, Laws of 1913 as last amended by section 1, chapter 79, Laws of 1987 and RCW 19.29.010 are each amended to read as follows:

It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the

point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That where said wire or cable is run vertically, it shall be rigidly supported* and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is

placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit

breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all ((men)) persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-half inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: **PROVIDED HOWEVER**, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: **PROVIDED FURTHER**, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any

railway or street car track: PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the ((workmen)) workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: PROVIDED, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: PROVIDED, That

the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters.

Sec. 4. Section 28B.20.450, chapter 223, Laws of 1969 ex. sess. and RCW 28B.20.450 are each amended to read as follows:

There shall be constructed and maintained at the University of Washington an occupational and environmental research facility in the school of medicine having as its objects and purposes testing, research, training, teaching, consulting and service in the fields of industrial and occupational medicine and health, the prevention of industrial and occupational disease among ~~((workmen))~~ workers, the promotion and protection of safer working environments and dissemination of the knowledge and information acquired from such objects and purposes.

Sec. 5. Section 28B.20.454, chapter 223, Laws of 1969 ex. sess. and RCW 28B.20.454 are each amended to read as follows:

Any matter or problem relating to the industrial and occupational health of ~~((workmen))~~ workers may be submitted to the environmental research facility by any public agency or interested party. All research data and pertinent information available or compiled at such facility related to the industrial and occupational health of ~~((workmen))~~ workers shall be made available and supplied without cost to any public agency or interested party.

Sec. 6. Section 3, chapter 63, Laws of 1945 as last amended by section 1, chapter 15, Laws of 1985 and RCW 39.12.010 are each amended to read as follows:

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of ~~((workmen))~~ workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, ~~((workmen))~~ workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, ~~((workmen))~~ workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to ((workmen)) workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the ((workmen)) workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

Sec. 7. Section 1, chapter 63, Laws of 1945 as last amended by section 1, chapter 130, Laws of 1982 and RCW 39.12.020 are each amended to read as follows:

The hourly wages to be paid to laborers, ((workmen)) workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to ((workmen)) workers or other persons regularly employed on monthly or per diem salary by the state, or any county, municipality, or political subdivision created by its laws.

Sec. 8. Section 1, chapter 93, Laws of 1963 and RCW 39.12.021 are each amended to read as follows:

Apprentice (~~(workmen)~~) workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any (~~(workman)~~) worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified (~~(journeyman)~~) journey level worker, and, therefore, shall be paid at the prevailing hourly rate for (~~(journeymen)~~) journey level workers.

Sec. 9. Section 2, chapter 63, Laws of 1945 and RCW 39.12.030 are each amended to read as follows:

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, (~~(workmen)~~) 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, (~~(workmen)~~) workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage.

Sec. 10. Section 6, chapter 63, Laws of 1945 as amended by section 4, chapter 133, Laws of 1965 ex. sess. and RCW 39.12.060 are each amended to read as follows:

Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

Sec. 11. Section 2, chapter 49, Laws of 1975-'76 2nd ex. sess. and RCW 39.12.042 are each amended to read as follows:

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall wilfully fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all (~~(workmen)~~) workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020.

Sec. 12. Section 3, chapter 107, Laws of 1937 and RCW 39.28.020 are each amended to read as follows:

Every municipality shall have power and is hereby authorized:

(1) To accept from any federal agency grants for or in aid of the construction of any public works project;

(2) To make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the municipality may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments;

(3) To subscribe to and comply with the Recovery Act and any rules and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency;

(4) To perform any acts authorized under RCW 39.28.010 through 39.28.030 through or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

(5) To award any contract for the construction of any public works project or part thereof upon any day at least fifteen days after one publication of a notice requesting bids upon such contract in a newspaper of general circulation in the municipality: PROVIDED, That in any case where publication of notice may be made in a shorter period of time under the provisions of existing statute or charter, such statute or charter shall govern;

(6) To sell bonds at private sale to any federal agency without any public advertisement;

(7) To issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the governing body of the municipality issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project;

(8) To issue bonds bearing the signatures of officers in office on the date of signing such bonds, notwithstanding that before delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be the officers of the municipality issuing the same;

(9) To include in the cost of a public works project which may be financed by the issuance of bonds: (a) Engineering, inspection, accounting, fiscal and legal expenses; (b) the cost of issuance of the bonds, including engraving, printing, advertising, and other similar expenses; (c) any interest costs during the period of construction of such public works project and for six months thereafter on money borrowed or estimated to be borrowed;

(10) To stipulate in any contract for the construction of any public works project or part thereof the maximum hours that any laborer, (~~workman~~) worker, or mechanic should be permitted or required to work in any one calendar day or calendar week or calendar month, and the minimum wages to be paid to laborers, (~~workmen~~) workers, or mechanics in connection with any public works project: PROVIDED, That no such stipulation shall provide for hours in excess of or for wages less than may now or hereafter be required by any other law;

(11) To exercise any power conferred by RCW 39.28.010 through 39.28.030 for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act, independently or in conjunction with any other power or powers conferred by RCW 39.28.010 through 39.28.030 or heretofore or hereafter conferred by any other law;

(12) To do all acts and things necessary or convenient to carry out the powers expressly given in RCW 39.28.010 through 39.28.030.

Sec. 13. Section 14, chapter 257, Laws of 1971 ex. sess. as last amended by section 13, chapter 185, Laws of 1987 and RCW 41.26.270 are each amended to read as follows:

The legislature of the state of Washington hereby declares that the relationship between members of the law enforcement officers' and fire fighters' retirement system and their governmental employers is similar to that of (~~workmen~~) workers to their employers and that the sure and certain relief granted by this chapter is desirable, and as beneficial to such law enforcement officers and fire fighters as workers' compensation coverage is to persons covered by Title 51 RCW. The legislature further declares that removal of law enforcement officers and fire fighters from workers' compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the course of employment or occupational disease, which the legislature finds to be accomplished by the provisions of this chapter and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the benefits and remedies conferred by this chapter upon law enforcement officers and fire fighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer except as otherwise provided by this chapter; and to that end all civil actions and civil causes of actions by such law enforcement officers and fire fighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chapter.

Sec. 14. Section 43.22.210, chapter 8, Laws of 1965 as amended by section 6, chapter 52, Laws of 1973 1st ex. sess. and RCW 43.22.210 are each amended to read as follows:

(1) It shall be the duty of the supervisor of the division of industrial safety and health or ~~((his))~~ the supervisor's deputy to carefully examine each coal mine in operation in this state at least every four months, and as much oftener as is necessary, to see that every precaution is taken to insure the safety of all ~~((workmen))~~ workers who may be engaged in the mine. These inspections shall include at least two visits of the inspection force to every working place in every mine in the state during each calendar year. The supervisor or ~~((his))~~ the supervisor's deputy shall make a record of each visit, noting the time and the material circumstances of the inspection, and shall keep each record on file in the office of the department; and also post at the mine a notice of ~~((his))~~ the inspection.

(2) If the management of any operating company shall refuse to permit the members of the department to enter any mine, the supervisor or ~~((his))~~ the supervisor's deputy shall file an affidavit setting forth such refusal, with the judge of the superior court of the county in which the mine is situated, and obtain an order from such judge commanding the management of the operating company to permit such examination and inspection, and to furnish the necessary facilities for the same, or in default thereof to be adjudged in contempt of court and punished accordingly.

(3) If the supervisor or ~~((his))~~ the supervisor's deputy shall, after examination of any mine, or the works and machinery connected therewith, find the same to be worked contrary to the provisions of this act [1917 c 36], or unsafe for the ~~((workmen))~~ workers employed therein, the supervisor shall notify the management, stating what changes are necessary. If the trouble is not corrected within reasonable time, the supervisor shall, through the attorney general, in the name of the state immediately apply to the superior court of the county in which the mine is located, or to a judge of said court in chambers, for a writ of injunction to enjoin the operation of all work in and about the said mine. Whereupon said court or judge shall at once proceed to hear and determine the case, and if the cause appears to be sufficient, after hearing the parties and their evidence, as in like cases, shall issue its writ to restrain the workings of said mine until all cause of danger is removed; and the cost of such proceeding shall be borne by the operating company of the mine: PROVIDED, That if the said court shall find the cause not sufficient, then the case shall be dismissed, and the costs will be borne by the state: PROVIDED, ALSO, That should the supervisor find during the inspection of a mine, or portion of a mine, such dangerous condition existing therein that in his or her opinion any delay in removing the ~~((workmen))~~ workers from such dangerous places might cause loss of life or serious personal injury to the employee, the supervisor shall have the right to temporarily withdraw all persons from such dangerous places until the foregoing provisions of this section can be carried into effect.

(4) Whenever he or she is notified of any loss of life in or about the mine, or whenever an explosion or other serious accident occurs, the supervisor shall immediately go or send his or her deputy to the scene of the accident to investigate and to render every possible assistance.

(5) The supervisor or ~~((his))~~ the supervisor's deputy shall make a record of the circumstances attending each accident investigated, which record shall be preserved in the files of the department. To enable the supervisor or ~~((his))~~ the supervisor's deputy to make such investigation and record, they shall have power to compel the attendance of witnesses and to administer oaths or affirmations to them. The costs of such investigations shall be paid by the state.

Sec. 15. Section 20, chapter 19, Laws of 1941 and RCW 49.24.270 are each amended to read as follows:

Wherever, in the prosecution of caisson work in which compressed air is employed, the working chamber is less than twelve feet in length, and when such caissons are at any time suspended or hung while work is in progress, so that the bottom of the excavation is more than nine feet below the deck of the working chamber, a shield shall be erected therein for the protection of the ~~((workmen))~~ workers.

Sec. 16. Section 1, chapter 136, Laws of 1929 and RCW 49.52.030 are each amended to read as follows:

All moneys realized by any employer from ~~((his or its))~~ the employer's employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to ~~((workmen))~~ workers engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all moneys owing by any employer therefor, shall be and remain a fund for the purposes for which such moneys are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: PROVIDED, HOWEVER, That RCW 49.52.030 and 49.52.040 shall not apply to moneys collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such moneys shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such moneys are due and for the purposes for which such collections or deductions were made.

Sec. 17. Section 53, chapter 289, Laws of 1971 ex. sess. as amended by section 15, chapter 224, Laws of 1975 1st ex. sess. and RCW 51.36.060 are each amended to read as follows:

Physicians examining or attending injured ~~((workmen))~~ workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-

insurer upon the condition or treatment of any such ((workman)) worker, or upon any other matters concerning such ((workmen)) workers in their care. All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any ((workman)) worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information.

Sec. 18. Section 15, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.150 are each amended to read as follows:

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, ((workmen)) workers, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

Sec. 19. Section 5, chapter 2, Laws of 1973 1st ex. sess. and RCW 70.89.050 are each amended to read as follows:

No liability under this chapter shall be created as to ((workmen)) workers who are employees of a contractor, subcontractor, or other employer responsible for compliance with this chapter.

Sec. 20. Section 34, chapter 36, Laws of 1917 and RCW 78.40.181 are each amended to read as follows:

Where fire bosses are employed ((workmen)) workers shall not go to work in the mine until the same and the traveling way leading thereto are reported safe by the fire boss or fire bosses so inspecting. Every such report shall be recorded as provided for under the duties of fire bosses, RCW 78.40.438.

Sec. 21. Section 60, chapter 36, Laws of 1917 and RCW 78.40.262 are each amended to read as follows:

The mine inspector may order a survey to be made of the workings of any mine, in addition to the regular annual survey, the results to be extended on the maps of the same and copies thereof, whenever the safety of the ((workmen)) workers, unlawful injury to the surface, unlawful encroachment on adjoining property, or the safety of an adjoining mine requires it.

If the inspector shall believe any map required by this chapter is materially inaccurate or imperfect, he or she is authorized to make or cause to be made a correct survey and map at the expense of the operating company, the cost recoverable as for debt: PROVIDED, If such test survey shows the operator's map to be practically correct, the state shall be liable for the expense incurred, payable in such manner as other state accounts incurred by the mine inspector.

Sec. 22. Section 86, chapter 36, Laws of 1917 and RCW 78.40.345 are each amended to read as follows:

The owner or operator of any coal mine shall provide a sufficient supply of timber at any such mine where the same is required for use as props, so that the (~~(workmen)~~) workers may at all times be able to properly secure their working places, and it shall be the duty of the owner or operator to send down into the mine all such props, the same to be delivered at the entrance to the working place, or as may be agreed upon between the employees and the operator.

Sec. 23. Section 104, chapter 36, Laws of 1917 and RCW 78.40.405 are each amended to read as follows:

The mine foreman shall have charge of all inside workings and of the persons employed therein, in order that all of the provisions of this chapter as far as they relate to his or her duties concerning the safety of the mine and the persons employed therein be complied with, and the regulations prescribed for each class of (~~(workmen)~~) workers under his or her charge be carried out in the strictest manner possible.

Sec. 24. Section 187, chapter 36, Laws of 1917 and RCW 78.40.672 are each amended to read as follows:

In driving crosscuts through pillars, before firing a blast, the miner must notify in person the (~~(workmen)~~) workers in the place toward which he or she is driving, so that they may find a place of safety. He or she shall also guard the passages on either side of his or her place at every shot, so that no person may come unawares upon it.

Sec. 25. Section 194, chapter 36, Laws of 1917 and RCW 78.40.693 are each amended to read as follows:

(~~(Workmen)~~) Workers and all other persons are expressly forbidden to commit any nuisance, or throw into, deposit or leave coal or dirt, stones or other rubbish in the airway or road to interfere with, pollute or hinder the air passing into and through the mine.

Sec. 26. Section 210, chapter 36, Laws of 1917 and RCW 78.40.741 are each amended to read as follows:

Duties of hoisting engineers: It shall be the duty of the engineer, who shall be a temperate competent person, to keep a careful watch over his or her engine and all machinery under his or her charge. He or she shall make

himself or herself acquainted with the signal codes provided for in this chapter, and by the special rules of the mine.

He or she shall not allow any unauthorized person to enter the engine house, nor shall he allow any person to handle or run the engine without the permission of the superintendent.

When ~~((workmen))~~ workers are being lowered or raised he or she shall take special precautions to keep the engine well under control.

Sec. 27. Section 13, chapter 306, Laws of 1927 and RCW 78.40.783 are each amended to read as follows:

At mines employing more than twenty-five ~~((men))~~ persons there shall be a subsafety committee at each level or entry, consisting of a mine foreman, assistant mine foreman, or fire boss, and one employee selected by the ~~((men))~~ persons working on such level or entry.

The members of this committee shall have had six months' experience in this mine or at mines where similar conditions exist. ~~((Workmen))~~ Workers serving on safety committee may be changed every two months.

Where ~~((workman))~~ a worker finds dangerous conditions that he or she cannot correct himself or herself, he or she shall report it to the official in charge of that section of the mine. If the condition is not corrected in a reasonable time he or she shall then call the other member of the safety committee to make an investigation. If the subsafety committee shall fail to agree they shall report to the general safety committee.

All level or entry safety committees shall attend and report at all meetings of the general safety committee.

The ~~((workmen's))~~ workers' representative on the subsafety committee shall not visit or inspect any part of the mine except when accompanied by the other member of the subsafety committee. If for any reason either member of the committee fails to act on any complaint it shall be referred to the general safety committee. At all mines employing less than twenty-five ~~((men))~~ persons the general safety committee shall have general supervision over all safety matters.

Sec. 28. Section 14, chapter 306, Laws of 1927 and RCW 78.40.786 are each amended to read as follows:

At each mine employing more than twenty-five ~~((men))~~ persons there shall be an outside committee consisting of the outside foreman, master mechanic and two employees selected by the ~~((men))~~ persons working on the outside. ~~((Workmen))~~ Workers serving on outside safety committee may be changed every two months. Where ~~((workman))~~ a worker finds dangerous or unsafe conditions that he or she cannot correct himself or herself, he or she shall report it to the outside foreman. If the condition is not corrected in a reasonable time, he or she shall report it to one of the ~~((workmen's))~~ workers' representatives on the safety committee, who shall then call the other members of the safety committee to make an investigation. If the

outside safety committee shall fail to agree they shall report it to the general safety committee. The ((workmen's)) workers' representatives shall not visit or inspect any part of the outside workings except when accompanied by the outside foreman or master mechanic. If for any reason any member of the committee fails to act upon any complaint called to his or her attention, it shall be referred to the general safety committees. It shall be understood that all safety committees shall confine themselves to safety measures and accident prevention alone, the sole purpose of their organization being to preserve the life and limb of ((workmen)) workers in and around the mines.

Passed the Senate January 25, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 13

[Senate Bill No. 5079]

UNIFORM COMMERCIAL CODE—VARIABLE INTEREST RATE AS STATED RATE FOR NEGOTIABLE INSTRUMENT

AN ACT Relating to the uniform commercial code; and amending RCW 62A.3-106 and 62A.3-109.

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

Sec. 1. Section 3-106, chapter 157, Laws of 1965 ex. sess. and RCW 62A.3-106 are each amended to read as follows:

- (1) The sum payable is a sum certain even though it is to be paid
 - (a) with stated interest or by stated installments; or
 - (b) with stated different rates of interest before and after default or a specified date; or
 - (c) with a stated discount or addition if paid before or after the date fixed for payment; or
 - (d) with exchange or less exchange, whether at a fixed rate or at the current rate; or
 - (e) with costs of collection or an attorney's fee or both upon default.
- (2) A rate of interest that cannot be calculated by looking only to the instrument is a stated rate of interest in subsection (1) of this section if the rate during any period is readily ascertainable by a reference in the instrument to a published statute, regulation, rule of court, generally accepted commercial or financial index, compendium of interest rates, or announced or established rate of one or more named financial institutions.
- (3) Graduated, variable, annuity or price-level adjusted payments are stated installments in subsection (1) of this section if such payments are provided for in the instrument.

(4) Nothing in this section shall validate any term which is otherwise illegal.

Sec. 2. Section 3-109, chapter 157, Laws of 1965 ex. sess. and RCW 62A.3-109 are each amended to read as follows:

(1) An instrument is payable at a definite time if by its terms it is payable

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event; or

(e) by variable, graduated, annuity or price-level adjusted payments.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

Passed the Senate March 3, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 14

[Substitute Senate Bill No. 5033]

REVISED CODE OF WASHINGTON—TECHNICAL AMENDMENTS

AN ACT Relating to technical corrections in the Revised Code of Washington; amending RCW 11.98.160, 19.52.020, 43.52.395, 63.14.130, 84.69.100, 19.52.030, 63.14.154, and 70.92.110; and adding a new section to chapter 4.16 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 4.16 RCW to read as follows:

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

Sec. 2. Section 58, chapter 30, Laws of 1985 and RCW 11.98.160 are each amended to read as follows:

For the purposes of ~~((this chapter))~~ RCW 11.98.130 through 11.98.150 the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death.

Sec. 3. Section 2, chapter 80, Laws of 1899 as last amended by section 1, chapter 224, Laws of 1985 and RCW 19.52.020 are each amended to read as follows:

(1) Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve ((Bank of San Francisco) System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action.

(2)(a) In any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder.

(b) The setup charge shall not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged.

(3) Any loan made pursuant to a commitment to lend at an interest rate permitted at the time the commitment is made shall not be usurious. Credit extended pursuant to an open-end credit agreement upon which interest is computed on the basis of a balance or balances outstanding during a billing cycle shall not be usurious if on any one day during the billing cycle the rate at which interest is charged for the billing cycle is not usurious.

Sec. 4. Section 2, chapter 1, Laws of 1982 and RCW 43.52.395 are each amended to read as follows:

(1) The maximum rate at which an operating agency shall add interest in repaying a member under RCW 43.52.391(~~(, as now or hereafter amended;)~~) may not exceed the higher of fifteen percent per annum or four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve ((Bank of San Francisco) System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the preceding calendar month.

(2) The maximum rate specified in subsection (1) of this section is applicable to all advances and contributions made by each member to the agency prior to January 21, 1982, and to all renewals of such advances and contributions.

Sec. 5. Section 13, chapter 236, Laws of 1963 as last amended by section 1, chapter 318, Laws of 1987 and RCW 63.14.130 are each amended to read as follows:

The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) Except as provided in subsection (2) of this section, the service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yields (as published by the Board of Governors of the Federal Reserve (~~(Bank of San Francisco)~~ System) of the bill rates for twenty-six week treasury bills for the last market auctions conducted during February, May, August, and November of the year prior to the year in which the retail installment contract is executed; or

(b) Ten dollars.

(2) The service charge in a retail installment contract for the purchase of a motor vehicle shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve (~~(Bank of San Francisco)~~ System) of the bill rate for twenty-six week treasury bills for the last market auction conducted during February, May, August, or November, as the case may be, prior to the quarter in which the retail installment contract for purchase of the motor vehicle is executed; or

(b) Ten dollars.

As used in this subsection, "motor 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 for devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(3) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed one and one-half percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(4) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided

the median amount is used in computing the service charge for all balances within such range.

Sec. 6. Section 84.69.100, chapter 15, Laws of 1961 as last amended by section 1, chapter 319, Laws of 1987 and RCW 84.69.100 are each amended to read as follows:

Refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 shall include interest from the date of collection of the portion refundable or from the date of claim for refund, whichever is later: PROVIDED, That refunds on a state, county, or district wide basis shall not commence to accrue interest until six months following the date of the final order of the court. No written protest by individual taxpayers need to be filed to receive a refund on a state, county, or district wide basis. The rate of interest shall be the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve (~~(Bank of San Francisco)~~) System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid or the claim for refund is filed, whichever is later. The department of revenue shall adopt this rate of interest by rule.

Sec. 7. Section 7, chapter 80, Laws of 1899 as amended by section 5, chapter 23, Laws of 1967 ex. sess. and RCW 19.52.030 are each amended to read as follows:

(1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount ~~((he))~~ the debtor has paid under the contract exceeds the amount to which the creditor is entitled: PROVIDED, That the debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or ~~((his))~~ that person's property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020. The reduction in principal shall be applied to diminish pro rata each future installment of principal payable under the terms of the contract.

(2) The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is usurious interest contracted for by the transaction of any agent the principal shall be held thereby to the same

extent as though ~~((he))~~ the principal had acted in person. ~~((And))~~ Where the same person acts as agent of the borrower and lender, ~~((he))~~ that person shall be deemed the agent of the lender for the purposes of this ~~((act))~~ chapter. If the agent of both the borrower and lender, or of the lender only, transacts a usurious loan for a commission or fee, such agent shall be liable to ~~((his))~~ the principal for the amount of the commission or fee received or reserved by the agent, and liable to the lender for the loss suffered by the lender as a result of the application of this ~~((act))~~ chapter.

Sec. 8. Section 12, chapter 234, Laws of 1967 as amended by section 4, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.154 are each amended to read as follows:

(1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach by sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement:

(a) If the retail installment transaction was entered into by the buyer and solicited in person by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

~~((c) By sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement.))~~

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation.

Sec. 9. Section 2, chapter 110, Laws of 1975 1st ex. sess. and RCW 70.92.110 are each amended to read as follows:

The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group ~~((H))~~ R-1 occupancies, except

for group M occupancies, as defined in the (~~Washington state~~) Uniform Building Code, 1988 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group (~~H~~) R-1 occupancies, except for group M occupancies, as set forth in the (~~Washington state~~) Uniform Building Code, 1988 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units.

Passed the Senate April 10, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 17, 1989.

Filed in Office of Secretary of State April 17, 1989.

CHAPTER 15

[Senate Bill No. 5089]

SUPERIOR COURTS—TRANSFER OF CASES

AN ACT Relating to superior courts; and amending RCW 4.12.040.

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

Sec. 1. Section 1, chapter 121, Laws of 1911 as last amended by section 1, chapter 303, Laws of 1961 and RCW 4.12.040 are each amended to read as follows:

(1) No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court. In all judicial districts where there is only one judge, a certified copy of the motion and affidavit filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the ~~((supreme court or the administrator for the court, and the chief justice of the supreme court))~~ superior court designated by the chief justice of the supreme court. Upon receipt the clerk of said superior court shall transmit the forwarded affidavit to the presiding judge who shall direct a visiting judge to hear and try such action as soon as convenient and practical.

(2) The presiding judge in judicial districts where there is more than one judge, ~~((or the chief justice of the supreme court for))~~ or the presiding judge of judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: PROVIDED, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his right to a trial by a jury of the county in which the offense is alleged to have been committed.

Passed the Senate February 10, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 16

[House Bill No. 1038]

COUNTY LEGISLATIVE AUTHORITIES—MEETINGS

AN ACT Relating to meetings of boards of county commissioners; and amending RCW 36.32.080 and 36.32.090.

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

Sec. 1. Section 36.32.080, chapter 4, Laws of 1963 and RCW 36.32-.080 are each amended to read as follows:

The ~~((board of county commissioners))~~ county legislative authority of each county shall hold regular ((sessions)) meetings at the county seat ((commencing on the first Mondays of January, April, July and October, at each of which it may)) to transact any business required or permitted by law ~~((, and it may adjourn from time to time as deemed expedient or desirable in order to properly transact the business of the county)).~~

Sec. 2. Section 36.32.090, chapter 4, Laws of 1963 and RCW 36.32-.090 are each amended to read as follows:

The ~~((board of county commissioners))~~ county legislative authority of each county may hold special ~~((sessions when the business of the county requires the same by ten days' notice from two of the commissioners to the third, or by the written consent of the three commissioners filed with the county auditor. No special session shall exceed three days. The notice thereof shall state the time of holding the session and the business to be transacted))~~ meetings to transact the business of the county. Notice of a special meeting shall be made as provided in RCW 42.30.080. A special meeting may be held outside of the county seat at any location within the county if the agenda item or items are of unique interest or concern to the citizens of the portion of the county in which the special meeting is to be held.

Passed the House February 3, 1989.

Passed the Senate April 3 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 17

[Substitute House Bill No. 1039]

MARINE OIL DUMPS AND HOLDING TANK PUMP SITES—INFORMATION TO BE SUPPLIED

AN ACT Relating to information for boaters; and amending RCW 88.02.050.

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

Sec. 1. Section 18, chapter 7, Laws of 1983 as amended by section 45, chapter 3, Laws of 1983 2nd ex. sess. and RCW 88.02.050 are each amended to read as follows:

Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of six dollars per year and the excise tax imposed under chapter 82.49 RCW. Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the six-dollar annual registration fee.

Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of

federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee and excise tax. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

When the department issues a decal for a new or renewal vessel registration, it shall also provide information on the location of marine oil refuse dumps and holding tank pumping stations.

A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar.

Passed the House March 9, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 18

[Substitute House Bill No. 1192]

CONSERVATION DISTRICTS—SPECIAL ASSESSMENTS AND GRANT ELIGIBILITY

AN ACT Relating to conservation districts; and adding new sections to chapter 89.08 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 89.08 RCW to read as follows:

(1) Special assessments are authorized to be imposed for conservation districts as provided in this section. Activities and programs to conserve natural resources, including soil and water, are declared to be of special benefit to lands and may be used as the basis upon which special assessments are imposed.

(2) Special assessments to finance the activities of a conservation district may be imposed by the county legislative authority of the county in which the conservation district is located. The supervisors of a conservation

district shall hold a public hearing on a proposed system of assessments prior to the first day of August in the year prior to which it is proposed that special assessments be collected. At that public hearing, the supervisors shall gather information and shall alter the proposed system of assessments when appropriate.

On or before the first day of August, the supervisors of a conservation district who are proposing to have special assessments imposed for the district in the following year shall file the proposed system of assessments and a proposed budget for the succeeding year with the county legislative authority of the county within which the conservation district is located. The county legislative authority shall hold a public hearing on the proposed system of assessments. After the hearing, the county legislative authority may accept, or modify and accept, the proposed system of assessments, if it finds that both the public interest will be served by the imposition of the special assessments and that the special assessments to be imposed on any land will not exceed the special benefit that the land receives or will receive from the activities of the conservation district. The findings of the county legislative authority shall be final and conclusive.

Notice of the public hearings held by the supervisors and the county legislative authority shall be posted conspicuously in at least five places throughout the conservation district, and published once a week for two consecutive weeks in a newspaper in general circulation throughout the conservation district, with the date of the last publication at least five days prior to the public hearing.

(3) A system of assessments shall classify lands in the conservation district into suitable classifications according to benefits conferred or to be conferred by the activities of the conservation district, determine an annual per acre rate of assessment for each classification of land, and indicate the total amount of special assessments proposed to be obtained from each classification of lands. Lands deemed not to receive benefit from the activities of the conservation district shall be placed into a separate classification and shall not be subject to the special assessments. An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land. The maximum annual per acre special assessment rate shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars.

Public land, including lands owned or held by the state, shall be subject to special assessments to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the special assessments of a conservation district.

Forest lands used solely for the planting, growing, or harvesting of trees may be subject to special assessments if such lands benefit from the

activities of the conservation district, but the per acre rate of special assessment on benefited forest lands shall not exceed one-tenth of the weighted average per acre assessment on all other lands within the conservation district that are subject to its special assessments. The calculation of the weighted average per acre special assessment shall be a ratio calculated as follows: (a) The numerator shall be the total amount of money estimated to be derived from the imposition of per acre special assessments on the non-forest lands in the conservation district; and (b) the denominator shall be the total number of nonforest land acres in the conservation district that receive benefit from the activities of the conservation district and which are subject to the special assessments of the conservation district. No more than ten thousand acres of such forest lands that is both owned by the same person or entity and is located in the same conservation district may be subject to the special assessments that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forest land parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forest landowner may be imposed on each owner of forest lands whose forest lands are subject to a per acre rate of assessment.

(4) A conservation district shall prepare an assessment roll that implements the system of assessments approved by the county legislative authority. The special assessments from the assessment roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of a special assessment shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest rate and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected special assessments, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments, but not to exceed the actual costs of such work.

(5) The special assessments for a conservation district shall not be spread on the tax rolls and shall not be collected with property tax collections in the following year if, after the system of assessments has been approved by the county legislative authority but prior to the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such special assessments, which petition has been signed by at least twenty percent of the owners of land that would be subject to the special assessments to be imposed for a conservation district.

NEW SECTION. Sec. 2. A new section is added to chapter 89.08 RCW to read as follows:

The state conservation commission may authorize grants to conservation districts from moneys appropriated to the commission for such purposes

as provided in this section. Such grants shall be made annually on or before the last day of June of each year and shall be made only to those conservation districts that apply for the grants. After all the grant requests have been submitted, the initial grants in any year shall be made so that a conservation district shall not receive a grant in excess of the lesser of: (1) an amount equal to the total moneys obtained by the conservation district from all other sources, other than any grants obtained from the state, during the preceding calendar year; or (2) twenty-two thousand five hundred dollars. If the appropriated moneys are insufficient to make the maximum level of the initial grants, each grant amount shall be reduced by an equal dollar amount until the total amount of the grants is equal to the amount of the appropriation.

However, further grants shall be made to those conservation districts that were limited to grants of twenty-two thousand five hundred dollars if the appropriated moneys are in excess of the amount of the initial distribution of grants, but the total of both grants to any conservation district in any year shall not exceed an amount equal to the total moneys obtained by that conservation district from all other sources, other than any grants obtained from the state, during the preceding calendar year. If the appropriated moneys are insufficient to make the second distribution of grants, each grant under the second distribution shall be reduced by an equal dollar amount until the total amount of all the grants is equal to the amount of the appropriation.

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 the House March 8, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 19

[Substitute Senate Bill No. 5097]

STATE MILITIA—REVISED PROVISIONS

AN ACT Relating to the state militia; amending RCW 38.04.010, 38.04.020, 38.04.030, 38.04.040, 38.08.010, 38.08.030, 38.08.040, 38.08.050, 38.08.070, 38.08.090, 38.12.010, 38.12.020, 38.12.030, 38.12.060, 38.12.070, 38.12.095, 38.12.115, 38.12.125, 38.12.150, 38.12.170, 38.12.180, 38.12.200, 38.16.010, 38.16.020, 38.16.030, 38.20.010, 38.20.040, 38.20.050, 38.24.010, 38.24.050, 38.24.060, 38.32.010, 38.32.020, 38.32.070, 38.32.080, 38.32.090, 38.32.120, 38.40.010, 38.40.020, 38.40.030, 38.40.040, 38.40.050, 38.40.060, 38.40.100, 38.40.110, 38.40.120, 38.40.130, 38.44.010, 38.44.020, 38.44.030, 38.44.040, 38.44.050, 38.44.060, and 38.48.050; repealing RCW 38.08.080, 38.40.071, 38.40.080, and 38.40.160; adding new sections to Title 38 RCW; and adding a new section to chapter 38.16 RCW.

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

Sec. 1. Section 12, chapter 130, Laws of 1943 as amended by section 133, chapter 220, Laws of 1963 and RCW 38.04.010 are each amended to read as follows:

When used in this act, the following words, terms, phrases shall have the following meaning:

The word "militia" shall mean the military forces provided for in the Constitution and laws of the state of Washington.

The term "organized militia" shall be the general term to include both state and national guard and whenever used applies equally to all such organizations (~~and shall be analogous to "state military forces" as defined in RCW 38.38.004~~).

The term "national guard" shall mean that part of the military force of the state that is organized, equipped and federally recognized under the provisions of the national defense act of the United States, and, in the event the national guard is called into federal service or in the event the state guard or any part or individual member thereof is called into active state service by the commander-in-chief, the term shall also include the "Washington state guard" or any temporary organization set up in times of emergency to replace either the "national guard" or "state guard" while in actual service of the United States.

The term "state guard" shall mean that part of the military forces of the state that is organized, equipped, and recognized under the provisions of the State Defense Forces Act of the United States (32 U.S.C. Sec. 109, as amended).

The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States (~~and shall be analogous to "active state duty" as defined in RCW 38.38.004~~).

The term "~~(or active)~~ inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty (~~and shall be analogous to "duty status other than active state duty" as defined in RCW 38.38.004~~).

The terms "in service of United States" and "not in service of United States" as used herein shall be understood to mean the same as such terms when used in the national defense act of congress and amendments thereto.

The term "military" refers to any or all of the armed forces.

The term "armory" refers to any state-owned building, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the Washington national guard

for the storage and maintenance of arms or military equipment or the administration or training of the organized militia.

The term "member" refers to a soldier or airman of the organized militia.

Sec. 2. Section 80, chapter 130, Laws of 1943 and RCW 38.04.020 are each amended to read as follows:

Whenever used in this act, the word "officer" shall be understood to designate commissioned and warrant officers, and the words "enlisted men" or "enlisted persons" shall be understood to designate members of the organized militia of Washington other than commissioned or warrant officers. The convictions and punishments mentioned unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts.

Sec. 3. Section 2, chapter 130, Laws of 1943 as last amended by section 55, chapter 154, Laws of 1973 1st ex. sess. and RCW 38.04.030 are each amended to read as follows:

The militia of the state of Washington shall consist of all able bodied citizens of the United States and all other able bodied persons who have ~~((or shall have))~~ declared their intention to become citizens of the United States, residing within this state, who shall be more than eighteen years of age, and shall include all persons who are members of the national guard and the state guard, and said militia shall be divided into two classes, the organized militia and the unorganized militia.

Sec. 4. Section 4, chapter 130, Laws of 1943 and RCW 38.04.040 are each amended to read as follows:

The organized militia of Washington shall consist of the commissioned officers, warrant officers, enlisted ~~((men))~~ persons, organizations, staffs, corps, and departments of the regularly commissioned, warranted and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with, and subject to the limitations imposed by the laws and regulations of the United States and the laws of this state: PROVIDED, HOWEVER, That the minimum enlisted strength of the organized militia of this state shall never be less than two thousand. The organized militia may include persons residing outside the state of Washington.

Sec. 5. Section 5, chapter 130, Laws of 1943 and RCW 38.08.010 are each amended to read as follows:

The governor shall cause the organized militia of this state at all times to conform to all federal laws and regulations as are now or may hereafter from time to time become operative and applicable, notwithstanding anything in the laws of this state to the contrary. Except as and when otherwise specifically provided by federal laws, the organized militia of Washington,

or any part thereof, shall be subject to call for United States service at such times, in such manner, and in such numbers as may from time to time be prescribed by the United States.

In conformity with the provisions of federal statutes, officers and enlisted ~~((men))~~ persons of the organized militia called or drafted into federal service by order or proclamation of the president of the United States, shall upon release from federal service revert to their former status, grade and rank, as members of the organized militia of Washington, and shall continue to serve in the organized militia of Washington until separated therefrom in the manner provided by law.

Sec. 6. Section 8, chapter 130, Laws of 1943 and RCW 38.08.030 are each amended to read as follows:

The governor may by proclamation declare the county or city in which troops are serving, or any specific portion thereof, to be under either complete or limited martial law to the extent, in his or her opinion, that the re-establishment or maintenance of law and order may be promoted.

"Complete martial law" is the subordination of all civil authority to the military;

"Limited military law" is a partial subordination of civil authority by the setting up of an additional police power vested in the military force which shall have the right to try all persons apprehended by it in such area by a military tribunal or turn such offender over to civil authorities within five days for further action, during which time the writ of habeas corpus shall be suspended in behalf of such person.

Sec. 7. Section 6, chapter 130, Laws of 1943 and RCW 38.08.040 are each amended to read as follows:

In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body ~~((of men))~~ acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as ~~((he))~~ the governor shall deem proper.

Sec. 8. Section 9, chapter 130, Laws of 1943 and RCW 38.08.050 are each amended to read as follows:

In event of, or imminent danger of, war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all of the available forces of the organized militia of Washington and shall consider them insufficient in

number to properly accomplish the purpose, he or she may then in addition order out the unorganized militia or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require.

Sec. 9. Section 15, chapter 130, Laws of 1943 and RCW 38.08.070 are each amended to read as follows:

Whenever the governor shall desire the attendance of a personal staff upon any occasion, he or she shall detail therefor officers from the active list of the organized militia of Washington; the officers detailed shall attend in uniform and shall constitute the personal staff of the governor for that occasion, reverting upon completion of such duty to their regular assignments.

Sec. 10. Section 92, chapter 130, Laws of 1943 as amended by section 1, chapter 86, Laws of 1969 ex. sess. and RCW 38.08.090 are each amended to read as follows:

The governor, through the adjutant general, shall promulgate in orders such rules (~~and regulations~~) and amendments (~~thereto~~) not inconsistent with law as (~~he~~) the governor may deem necessary for the organization, maintenance and training of the militia, and the acquisition, use, issue or disposal of military property. The governor's regulatory powers herein with respect to military property shall include reasonable authority to make regulations controlling the use and temporary disposal of military property including real property for civic purposes where consistent with federal law and regulations, in a manner similar to the law pertaining to the use of armories. (~~Such rules and~~) The adopted regulations (~~when so promulgated~~) shall have the same force and effect as (~~though herein~~) if enacted.

Sec. 11. Section 2, chapter 250, Laws of 1957 as amended by section 3, chapter 338, Laws of 1981 and RCW 38.12.010 are each amended to read as follows:

The governor, with the advice and consent of the senate, shall appoint an adjutant general who shall be chief of staff to the governor, and may be removed by the governor at will. (~~He~~) The adjutant general shall appoint the civilian employees and other personnel of (~~his~~) the department and may remove any of them in (~~his discretion~~) accordance with applicable law.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures.

The adjutant general must execute an official bond running to the state in the penal sum of twenty thousand dollars conditioned for the faithful performance of his or her duties. The bond shall be submitted to the attorney general for approval, and when approved shall be filed in the office of the secretary of state. The cost of the bond shall be paid by the state.

The adjutant general may obtain and pay for, from funds appropriated for military purposes, a surety bond or bonds running to the state covering such officers of the organized militia responsible to the state for money or military property, as may be advisable to insure proper accountability. The bond or bonds shall be approved and filed in the same manner as the adjutant general's bond.

Sec. 12. Section 3, chapter 250, Laws of 1957 as amended by section 32, chapter 75, Laws of 1977 and RCW 38.12.020 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) ~~((He shall))~~ 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 ~~((commissioned officers))~~ departments and units of the organized militia.

(3) ~~((He shall))~~ Keep just and true accounts of all monays received and disbursed by him or her.

(4) ~~((He shall))~~ Attest all commissions issued to military officers of this state.

(5) ~~((He shall))~~ Make out and transmit all militia reports, returns, and communications prescribed by acts of congress or by direction of the ~~((War))~~ department of defense and the national guard bureau.

(6) ~~((He shall))~~ 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 ~~((his))~~ the successor. All orders issued from his or her office shall be authenticated with the seal.

(7) ~~((He shall))~~ Make 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, as in his or her opinion the conditions demand.

(8) ~~((He shall))~~ 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, 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) ~~((He shall))~~ 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 ~~((in an emergency and then only with the approval of the adjutant general))~~ as permitted by applicable state or federal law.

(10) ~~((He shall))~~ 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) ~~((He shall))~~ 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 be the custodian of all records, relics, trophies, colors, and histories relating to such wars now in possession of, or which may be acquired by the state.

(12) ~~((He shall))~~ 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) ~~((He shall))~~ 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. ((He)) 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.

Sec. 13. Section 21, chapter 130, Laws of 1943 as last amended by section 1, chapter 218, Laws of 1983 and RCW 38.12.030 are each amended to read as follows:

Whenever a vacancy has occurred, or is about to occur in the office of the adjutant general, the governor shall order to active service for that position from the active list of the Washington army national guard or Washington air national guard an officer not below the rank of a field grade officer who has had at least ten years service as an officer on the active list of the Washington army national guard or the Washington air national guard during the fifteen years next prior to such detail. The officer so detailed shall during the continuance of his or her service as the adjutant general hold the rank of a general officer.

Whenever a vacancy has occurred, or is about to occur, in the offices of assistant adjutants general for the Washington army national guard or the Washington air national guard, the adjutant general with the concurrence

of the governor may appoint an officer of the army national guard or the air national guard, who has had at least ten years service in the active list of his respective branch during the fifteen years next prior to such detail. The officer so detailed, may during the continuance of his service as assistant adjutant general hold the rank of a general officer.

If, by reason of the call or draft of officers of the Washington army national guard and/or air national guard into federal service, there is no officer of the Washington national guard available for detail as the adjutant general or as an assistant adjutant general who possesses the requisite qualifications, the governor may appoint any officer or former officer of the organized militia of Washington as acting adjutant general or as an acting assistant adjutant general. If the officers on detail as the adjutant general or as assistant adjutants general are appointed, called, or drafted into the military service of the United States by order or proclamation of the president, they shall be granted leaves of absence by the governor, and are entitled, upon release from federal service, to return to their former status as adjutant general or as assistant adjutants general of Washington, and during the period that they are in federal service, the duties of these offices shall be performed by an acting adjutant general and acting assistant adjutants general, appointed by the governor, as provided in this section, who shall receive the same pay provided for the adjutant general and/or assistant adjutants general respectively, during the period of such assignments.

The adjutant general shall receive an annual salary equal to the base pay of a major general in the United States army. The assistant adjutant general for the Washington army national guard and the assistant adjutant general for the Washington air national guard shall each receive an annual salary equal to the base pay of an officer of equivalent grade in the United States army or United States air force but not to exceed that of a brigadier general. So long as a member of the judiciary of the state of Washington is available for judicial work at such times and under such conditions as may be set forth by local rules and custom, that member may serve as an active member of the national guard or air national guard.

Sec. 14. Section 19, chapter 130, Laws of 1943 as amended by section 41, chapter 292, Laws of 1971 ex. sess. and RCW 38.12.060 are each amended to read as follows:

All commissioned and warrant officers of the organized militia of Washington shall be appointed and commissioned or warranted by the governor only as hereinafter provided. No person shall be so appointed and commissioned or warranted unless he or she shall be a citizen of the United States and of this state and more than eighteen years of age. Every commissioned and warranted officer shall hold office under his or her commission or warrant until he or she shall have been regularly appointed and commissioned or warranted to another rank or office, or until he or she shall have been regularly retired, discharged, dismissed or placed in the reserve.

Sec. 15. Section 20, chapter 130, Laws of 1943 and RCW 38.12.070 are each amended to read as follows:

No person shall be appointed and commissioned or warranted to any office in the organized militia of Washington unless he or she shall have been examined and adjudged qualified therefor by an examining board, appointed by the adjutant general, and whose report shall have been approved by the authority appointing the board. The composition, appointment and procedure of examining boards and the nature and scope of examinations shall be as prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion pursuant to this section and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer (~~shall~~) may be honorably discharged, retired or placed in the reserve as the governor shall direct.

Sec. 16. Section 1, chapter 34, Laws of 1974 ex. sess. and RCW 38.12.095 are each amended to read as follows:

Whenever a commissioned officer is to be appointed or promoted either to fill a vacancy in the organized militia (Washington army national guard, Washington air national guard and the Washington state guard) or for any other reason, the officer to be appointed or promoted shall be selected by the officer promotion board(~~(= PROVIDED, HOWEVER, That)~~). This selection in no way will change the powers of the governor under RCW 38.12.060(= AND PROVIDED FURTHER, HOWEVER, That). This section in no way applies to appointments or promotions to adjutant general or assistant adjutant general, to the appointment of officers to the rank of captain, lieutenant, or warrant officer, or to the promotion of second lieutenants, first lieutenants, or warrant officers.

Sec. 17. Section 3, chapter 34, Laws of 1974 ex. sess. and RCW 38.12.115 are each amended to read as follows:

The officer promotion board will meet from time to time as directed by the adjutant general. The board will select the best qualified officer for each promotion to be made in the organized militia, (~~(will approve or disapprove the appointment of all of the commissioned officers in the organized militia;)~~) and will do any other act pertaining thereto directed by the adjutant general or allowed or directed by statute.

Sec. 18. Section 4, chapter 34, Laws of 1974 ex. sess. and RCW 38.12.125 are each amended to read as follows:

The officer promotion board shall be composed as follows:

(1) For promotions or appointments of army national guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five (~~(senior)~~) commanders senior in grade and date of rank in that grade in the Washington army national guard(= PROVIDED, HOWEVER, That). If the board is selecting an officer for promotion to

the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced(~~(-PROVIDED FURTHER, HOWEVER, That))~~. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(2) For promotions or appointments of air national guard officers, the board will consist of the adjutant general, the assistant adjutant general air, and the five ~~((senior))~~ commanders senior in grade and date of rank in that grade in the Washington air national guard(~~(-PROVIDED, HOWEVER, That))~~. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced(~~(-PROVIDED FURTHER, HOWEVER, That))~~. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(3) For promotions or appointments of state guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five ~~((senior))~~ officers senior in grade and in date of rank in that grade in the state guard(~~(-PROVIDED, HOWEVER, That))~~. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced(~~(-PROVIDED FURTHER, HOWEVER, That))~~. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

Sec. 19. Section 29, chapter 130, Laws of 1943 and RCW 38.12.150 are each amended to read as follows:

Every officer, duly commissioned or warranted shall within such time as may be provided by law or by regulations, take the oath of office prescribed by law, and give bond, if required. In case of neglect or refusal so to do, ~~((he))~~ the officer shall be considered to have resigned such office and a new appointment may be made as provided by law.

Sec. 20. Section 1, chapter 72, Laws of 1925 ex. sess. as last amended by section 1, chapter 198, Laws of 1984 and RCW 38.12.170 are each amended to read as follows:

The governor may ~~((dismiss))~~ terminate the membership of any commissioned or warrant officer of the organized militia of Washington for any of the following reasons:

- (1) Conviction of an infamous crime;
- (2) Absence from his or her command for more than thirty days without proper leave;
- (3) Sentence of dismissal by court martial, duly approved;

(4) Upon muster out of the organization to which the officer is then assigned;

(5) Acceptance of the resignation of the officer, but no officer may be discharged or his or her resignation accepted while under arrest or against whom military charges have been preferred, or until he or she has turned over to his or her successor or satisfactorily accounted for all state and federal moneys and military property for which he or she is accountable or responsible;

(6) Removal of his or her actual residence to such distance from the station of his or her command as to render it impracticable for him or her to perform the duties of his or her office;

(7) Incompetence or unfitness for military service as determined by the duly approved findings of a board of ~~((inquiry))~~ officers appointed for that purpose by the adjutant general.

The adjutant general shall annually appoint and convene qualitative retention boards to review the military personnel records of officers who have completed three or more years service in the Washington state guard to determine their retention potential and acceptability for continuation in an active status. In the conduct of the reviews, the regulation issued by the adjutant general to implement this provision shall conform to the extent practicable to that governing the army national guard.

Sec. 21. Section 33, chapter 130, Laws of 1943 as amended by section 2, chapter 198, Laws of 1984 and RCW 38.12.180 are each amended to read as follows:

Commissioned officers of the organized militia of Washington shall be retired by order of the commander-in-chief with the rank respectively held by them at the time of such retirement for the following reasons:

(1) Unfitness for military service by reason of permanent physical disability.

(2) Upon request after at least five years continuous service as an officer in the organized militia of Washington.

Commissioned officers of the state guard shall upon reaching the age of sixty-four years be retired.

Retired officers shall draw no pay or allowance ~~((except when on active duty))~~ from the state unless recalled to service.

Retired officers are subject, with their consent, to temporary detail on active ~~((duty))~~ state service by the commander-in-chief, and while on such duty shall receive the same pay and allowances as officers of like rank on the active list.

Sec. 22. Section 37, chapter 130, Laws of 1943 as amended by section 1, chapter 93, Laws of 1982 and RCW 38.12.200 are each amended to read as follows:

Every commissioned officer of the organized militia of Washington shall within sixty days from the date of the order whereby he or she shall

have been appointed, provide ((himself)) at ((his)) the officer's own expense, with the uniform and equipment prescribed by the governor for his or her rank and assignment.

There shall be audited and may be paid, at the option of the adjutant general, to each properly uniformed and equipped officer of the active list of the organized militia of Washington, not in federal service an initial uniform allowance of one hundred dollars and annually thereafter for each twelve months state service an additional uniform allowance of fifty dollars, subject to such regulations as the commander-in-chief may prescribe to be audited and paid upon presentation of proper voucher.

NEW SECTION. Sec. 23. A new section, to be codified as RCW 38.14.006, is added to Title 38 RCW to read as follows:

The Washington state guard will be available to serve, at the call of the governor in the place of the national guard of the state of Washington under the provisions of this title when the national guard is in the service of the United States, or when otherwise ordered to active state service by the governor. The Washington state guard shall consist of commissioned and warrant officers and enlisted persons commissioned, warranted, or enlisted under the provisions of this title. Persons enlisted under section 30 of this act shall be enrolled in accordance with regulations promulgated by the adjutant general.

NEW SECTION. Sec. 24. A new section, to be codified as RCW 38.14.012, is added to Title 38 RCW to read as follows:

No member of the Washington state guard shall by reason of such membership be exempt from federal military service under the laws of the United States.

NEW SECTION. Sec. 25. A new section, to be codified as RCW 38.14.018, is added to Title 38 RCW to read as follows:

Members of the Washington state guard shall serve without pay except when on active state service with the state as defined in RCW 38.04.010, or when serving on inactive duty as defined in RCW 38.04.010 under orders of the governor specifically authorizing pay. When ordered to active state service or when serving on inactive duty in a pay status, members of the Washington state guard will be paid as prescribed for members of the national guard in RCW 38.24.050, except longevity adjustments for pay will be based solely on total service with the Washington state guard.

NEW SECTION. Sec. 26. A new section, to be codified as RCW 38.14.024, is added to Title 38 RCW to read as follows:

The governor may obtain from the federal government such arms and other equipment and supplies as may be available for issue, donation or loan for the use of the Washington state guard. When such property is provided by the federal government, it will be utilized, maintained, and disposed of in

accordance with federal requirements and with property rules and regulations promulgated under the provisions of RCW 38.08.090.

NEW SECTION. Sec. 27. A new section, to be codified as RCW 38.14.030, is added to Title 38 RCW to read as follows:

Members of the Washington state guard may participate in such training opportunities as may be available from the federal government and as approved by the adjutant general. Where required as a condition of such participation, the military department may reimburse the federal government for the costs of such training.

NEW SECTION. Sec. 28. A new section, to be codified as RCW 38.14.036, is added to Title 38 RCW to read as follows:

The adjutant general shall establish by regulation qualifications for appointment of commissioned and warrant officers in the Washington state guard.

Sec. 29. Section 35, chapter 130, Laws of 1943 and RCW 38.16.010 are each amended to read as follows:

The period of enlistment in the ~~((organized militia of))~~ Washington national guard shall ~~((be for three years. PROVIDED, That no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four))~~ conform to the laws and regulations of the United States department of defense governing such enlistments including the term of such enlistments and the maximum and minimum age of enlistment.

NEW SECTION. Sec. 30. A new section is added to chapter 38.16 RCW to read as follows:

The period of enlistment in the Washington state guard shall be set by regulation by the adjutant general: PROVIDED, That no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four.

Sec. 31. Section 36, chapter 130, Laws of 1943 and RCW 38.16.020 are each amended to read as follows:

An enlisted ~~((man))~~ person discharged from service in the organized militia of Washington shall receive a notice of discharge in writing in such form and classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority.

Sec. 32. Section 34, chapter 130, Laws of 1943 and RCW 38.16.030 are each amended to read as follows:

The inactive national guard ~~((reserve))~~ of this state shall respectively be organized by the governor in regulations ~~((conforming))~~ in conformance with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted men as the governor shall prescribe.

No commissioned officer shall be transferred or furloughed to the national guard reserve without ~~((his))~~ the officer's written consent, except as otherwise expressly provided by law. Any officer of the inactive national guard ~~((reserve))~~ may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his or her rank, and in such event his or her service in ~~((reserve))~~ the inactive national guard shall not be counted in computing total length of service for relative seniority.

Sec. 33. Section 93, chapter 130, Laws of 1943 as last amended by section 1, chapter 295, Laws of 1985 and RCW 38.20.010 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 ~~((rifle))~~ small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for use for casual civic purposes, and amateur and professional sports and theatricals upon payment of fixed rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental

charges derived from armory rentals less the cleaning deposit shall be paid into the state general fund.

Sec. 34. Section 98, chapter 134, Laws of 1909 and RCW 38.20.040 are each amended to read as follows:

All armories and ~~((rifle))~~ small arms ranges and all property, real or personal, used by the national guard and not owned by the state of Washington or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief.

Sec. 35. Section 91, chapter 130, Laws of 1943 and RCW 38.20.050 are each amended to read as follows:

Under the direction of the governor, the adjutant general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain and control such ~~((rifle))~~ small arms ranges and issue such ammunition, transportation and supplies as may be necessary to provide each unit of the organized militia of Washington with adequate means and opportunity for thorough instruction in ~~((rifle))~~ small arms practice.

Sec. 36. Section 42, chapter 130, Laws of 1943 as amended by section 14, chapter 106, Laws of 1973 and RCW 38.24.010 are each amended to read as follows:

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

Sec. 37. Section 43, chapter 130, Laws of 1943 as last amended by section 3, chapter 198, Laws of 1984 and RCW 38.24.050 are each amended to read as follows:

Commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington, while in active state service or inactive duty, are entitled to and shall receive the same amount of pay and allowances from the state of Washington as provided by federal laws and regulations for commissioned officers, warrant officers, and enlisted personnel of the United States army only if federal pay and allowances are not authorized. ~~((Officers shall receive travel expenses in accordance with RCW 43-03-050 and 43-03-060.))~~ For periods of such active state service,

commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington shall receive either such pay and allowances or ~~((thirty dollars per day))~~ an amount equal to one and one-half of the federal minimum wage, whichever is greater.

The value of articles issued to any member and not returned in good order on demand, and legal fines or forfeitures, may be deducted from the member's pay.

If federal pay and allowances are not authorized, all members detailed to serve on any board or commission ordered by the governor, or on any ~~((court of inquiry or))~~ court-martial ordered by proper authority, may, at the discretion of the adjutant general, be paid a sum equal to one day's active ~~((duty))~~ state service for each day actually employed on the board or court or engaged in the business thereof, or in traveling to and from the same; and in addition thereto travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended when such duty is at a place other than the city or town of his residence.

Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on active state ~~((active duty))~~ service may be contracted for and paid for as are other military bills.

Sec. 38. Section 2, chapter 46, Laws of 1974 ex. sess. as amended by section 4, chapter 198, Laws of 1984 and RCW 38.24.060 are each amended to read as follows:

All members of the organized militia of Washington who are called to active state ~~((active duty))~~ service or inactive duty shall, upon return from such duty, have those rights accorded under RCW 73.16.031, 73.16.035, 73.16.041, 73.16.051, and 73.16.061.

Sec. 39. Section 82, chapter 130, Laws of 1943 as amended by section 134, chapter 220, Laws of 1963 and RCW 38.32.010 are each amended to read as follows:

Any ~~((officers and men))~~ member of the organized militia on duty status as provided in RCW 38.38.624, or within state armories, committing offenses against the laws of the state, shall be promptly arrested by the military authorities and turned over to the civil authorities of the county or city in which the offense was committed.

Sec. 40. Section 81, chapter 130, Laws of 1943 as amended by section 135, chapter 220, Laws of 1963 and RCW 38.32.020 are each amended to read as follows:

Offenses under chapter 38.38 RCW committed while on ~~((active))~~ inactive duty or active state service as defined in RCW 38.04.010 may be tried and punished as provided under chapter 38.38 RCW after this ~~((active))~~ duty or service has terminated, and if found guilty the accused shall be punished accordingly. Any ~~((officers and men))~~ member of the organized

militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, where the offense charged is also made an offense by the civil law of this state, may, in the discretion of the officer whose duty it is to approve the charge, be turned over to the proper civil authorities for trial.

Any (~~officers and men~~) member of the organized militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, may, if such offense is committed upon a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law.

Sec. 41. Section 84, chapter 130, Laws of 1943 as amended by section 139, chapter 220, Laws of 1963 and RCW 38.32.070 are each amended to read as follows:

If any (~~soldier~~) member is known to have removed from the state, and, through ignorance or neglect, has failed to apply for discharge, (~~his~~) the discharge may be requested by his or her immediate commanding officer.

Sec. 42. Section 10, chapter 130, Laws of 1943 and RCW 38.32.080 are each amended to read as follows:

Any member of the militia who shall have been ordered out for either state or federal service and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court martial may direct, unless he or she shall produce a sworn certificate from a licensed physician of good standing that he or she was physically unable to appear at the time and place designated(~~(- PROVIDED, That))~~. Any person chargeable with desertion under this section may be taken by force and compelled to serve.

Sec. 43. Section 11, chapter 130, Laws of 1943 and RCW 38.32.090 are each amended to read as follows:

Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service shall be guilty of perjury and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice (~~his profession~~) in this state.

Sec. 44. Section 52, chapter 130, Laws of 1943 as amended by section 137, chapter 220, Laws of 1963 and RCW 38.32.120 are each amended to read as follows:

The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb

or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and ~~((he))~~ may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and ~~((he))~~ the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits. Any person violating any of the provisions of this section, or any order issued in pursuance thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment.

No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general.

Sec. 45. Section 13, chapter 130, Laws of 1943 and RCW 38.40.010 are each amended to read as follows:

Members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally for any act or acts done by them while on such duty nor shall any action lie against any officer or enlisted ~~((man))~~ person for any acts done by ~~((him))~~ the officer or enlisted person in line of duty by virtue of any order which may thereafter be held invalid by any civil court. When a suit or proceeding shall be commenced in any court by any person against any officer or enlisted ~~((man))~~ person of the militia for any act done by such officer or enlisted ~~((man))~~ person in his or her official capacity or in the discharge of any duty, or against any person acting under the authority or order of such officer or by virtue of any warrant issued pursuant to law, the defendant may require the person prosecuting or instituting the proceeding to give security for the payment of all costs that may be awarded to the defendant, and the defendant in all cases may make a general denial and, under such general denial, give all other or any special defense matter in evidence. In case the plaintiff shall be nonsuited or the verdict or judgment be in favor of the defendant, treble costs shall be assessed against the plaintiff. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may also be employed by the defendant. The venue of all such actions shall be Thurston county and the state of Washington shall be in all cases a necessary party defendant.

Sec. 46. Section 14, chapter 130, Laws of 1943 and RCW 38.40.020 are each amended to read as follows:

The commanding officer of any of the military forces of the state of Washington engaged under the order of proper authority in the suppression

of insurrection, the dispersion of a mob, the protection of life or property, or the enforcement of the laws, shall exercise (~~his~~) discretion as to the propriety of the means to be used in controlling or dispersing of any mob or other unlawful assembly and, if he or she exercises his or her honest judgment thereon, he or she shall not be liable in either a civil or criminal action for any act done in line of duty.

Sec. 47. Section 40, chapter 130, Laws of 1943 as last amended by section 5, chapter 185, Laws of 1987 and RCW 38.40.030 are each amended to read as follows:

If any member of the organized militia is injured, incapacitated, or otherwise disabled while in active state service or inactive duty as a member of the (~~(military force of the state))~~ organized militia, he or she shall receive from the state of Washington just and reasonable relief in the amount to be determined as provided in this section, including necessary medical care. If the member dies from disease contracted or injury received or is killed while in active state service or inactive duty under order of the governor, then the dependents of the deceased shall receive such compensation as may be allowed as provided in this section. If the United States or any agent thereof, in accordance with any federal statute or regulation, furnishes monetary assistance, benefits, or other temporary or permanent relief to militia members or to their dependents for injuries arising out of and occurring in the course of their activities as militia members, but not including Social Security benefits, then the amount of compensation which any militia member or his or her dependents are otherwise entitled to receive from the state of Washington as provided in this section shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the militia member or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical officer, to be appointed by the adjutant general. The board has the same power to take evidence, administer oaths, issue subpoenas, compel witnesses to attend and testify and produce books and papers, and punish their failure to do so as is possessed by a general court martial. The amount of compensation or benefits payable shall conform as nearly as possible to the general schedule of payments and awards provided under the workers' compensation law in effect in the state of Washington at the time the disability or death occurred. The findings of the board shall be reviewed by the adjutant general and submitted to the governor for final approval. The reviewing officer or the governor may return the proceedings for revision or for the taking of further testimony. The action of the board when finally approved by the governor is final and conclusive and constitutes the fixed award for the injury or loss and is a debt of the state of Washington.

Sec. 48. Section 46, chapter 130, Laws of 1943 and RCW 38.40.040 are each amended to read as follows:

A person, who either (~~(by himself)~~) alone, or with another, wilfully deprives a member of the organized militia of Washington of his or her employment or prevents(~~(-by himself or another,)~~) such member being employed, or obstructs or annoys said member or his or her employer in (~~(his)~~) their trade, business or employment, because he or she is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him or her in (~~(his)~~) their employment, trade or business, in case he or she shall so enlist, shall be guilty of a gross misdemeanor and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

Sec. 49. Section 48, chapter 130, Laws of 1943 and RCW 38.40.050 are each amended to read as follows:

No member of the organized militia of Washington shall be discharged by his or her employer by reason of the performance of any military duties upon which he or she may be ordered. When any member of the organized militia of Washington is ordered upon active state service or inactive duty which takes (~~(him)~~) the member from his or her employment (~~(he)~~) the member may apply upon the termination of such duty to be restored to his or her position and employment, and if the tour of duty shall have continued for a period not longer than three months, any employer or the officer or manager of any firm or corporation having authority to reemploy such member and failing to do so shall be guilty of a gross misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

Sec. 50. Section 1, chapter 113, Laws of 1939 as amended by section 1, chapter 236, Laws of 1957 and RCW 38.40.060 are each amended to read as follows:

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each calendar year. Such leave shall be granted in order that the person may take part in active training duty in such manner and at such time as he may be ordered to active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or

employee shall receive from the state, or the county, city, or other political subdivision, his or her normal pay.

Sec. 51. Section 53, chapter 130, Laws of 1943 and RCW 38.40.100 are each amended to read as follows:

Orders for duty may be oral or written. Officers and enlisted ~~((men))~~ persons may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his or her last known place of abode or business, with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof, to such ~~((man))~~ person by mail, directed to ~~((him-at))~~ his or her last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or authorized enlisted ~~((man))~~ person. The officer or enlisted ~~((man))~~ person giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated.

Sec. 52. Section 47, chapter 130, Laws of 1943 and RCW 38.40.110 are each amended to read as follows:

No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia ~~((, in respect to his eligibility to membership in such club, society, association, corporation or organization, or in respect to his rights to retain and exercise the rights of membership therein))~~. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit right to do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause of action for damages.

Sec. 53. Section 54, chapter 130, Laws of 1943 and RCW 38.40.120 are each amended to read as follows:

No organized body ~~((of men))~~ other than the recognized militia organizations of this state, armed forces of the United States, students of educational institutions where military science is a prescribed part of the course of instruction or bona fide veterans organizations shall associate themselves together as a military company or organize or parade in public

with firearms: PROVIDED, That nothing herein shall be construed to prevent authorized parades by the organized militia of another state or armed forces of foreign countries. Any person participating in any such unauthorized organization shall be guilty of a misdemeanor.

Sec. 54. Section 49, chapter 130, Laws of 1943 and RCW 38.40.130 are each amended to read as follows:

The officers, or the officers and enlisted (~~((men))~~) persons of any regiment, battalion, company or similar unit of the organized militia of Washington, or the officers and enlisted (~~((men))~~) persons of any two or more companies or similar units of the organized militia of the state of Washington, located at the same station, are hereby authorized to organize themselves into a corporation for social purposes and for the purpose of holding, acquiring and disposing of such property, real and personal, as such military organizations may possess or acquire. Such corporations shall not be required to pay any filing or license fee to the state.

The dissolution or disbandment of any such unit as a military organization shall not in itself terminate the existence of the corporation, but the existence of the same may continue for the period limited in its articles of incorporation for the benefit of such corporation.

Upon the dissolution or disbandment of any such unit which shall not have incorporated, and which shall at the time of such dissolution or disbandment possess any funds or property, the title to such funds or property shall immediately vest in the state of Washington, and the adjutant general shall take possession thereof and dispose of the same to the best interest of the organized militia of Washington.

Sec. 55. Section 4, chapter 108, Laws of 1895 as last amended by section 57, chapter 154, Laws of 1973 1st ex. sess. and RCW 38.44.010 are each amended to read as follows:

Whenever the commander-in-chief shall deem it necessary, in event of, or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process (~~((or))~~), breach of the peace, (~~((he))~~) public disaster, or the imminent occurrence of any of these events, the commander-in-chief may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane able bodied inhabitant not under sentence for (~~((an infamous crime))~~) a felony, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate and shall state the name, residence, age, occupation and previous or existing military or naval service of each person enrolled. When complete the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant

general of the state and another with the county auditor, retaining the third copy for himself or herself.

Sec. 56. Section 5, chapter 108, Laws of 1895 as amended by section 5, chapter 134, Laws of 1909 and RCW 38.44.020 are each amended to read as follows:

Persons making an enrollment under ~~((this act))~~ RCW 38.20.040 and 38.44.020 through 38.44.060 shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to ~~((him))~~ the enrollee personally or by leaving it with some person of suitable age and discretion at his or her place of business or residence, or by mailing such notice to him or her at ~~((his))~~ the enrollee's last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant general. ~~((Such))~~ The return shall be prima facie evidence of the facts therein ((shown)).

Sec. 57. Section 6, chapter 108, Laws of 1895 as amended by section 6, chapter 134, Laws of 1909 and RCW 38.44.030 are each amended to read as follows:

Whenever an enrollment shall have been ordered under ~~((this act))~~ RCW 38.20.040 and 38.44.020 through 38.44.060, the commanding officers of existing organizations of militia, and the chiefs of all police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "Exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant general, the latter shall notify the county auditor of ~~((his))~~ the decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant general, the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty.

Sec. 58. Section 7, chapter 134, Laws of 1909 and RCW 38.44.040 are each amended to read as follows:

If any officer or person, who becomes charged under ~~((this act))~~ RCW 38.20.040 and 38.44.020 through 38.44.060 with any duty relating to an

enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he or she shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he or she shall knowingly or wilfully omit from the roll any person required by ~~((this act))~~ RCW 38.20-.040 and 38.44.020 through 38.44.060 to be enrolled he or she shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Washington by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and, when recovered, to be paid into the military fund of the state.

Sec. 59. Section 8, chapter 134, Laws of 1909 and RCW 38.44.050 are each amended to read as follows:

Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by ~~((him or his))~~ the enrolling officer or assistants, to be audited and paid as other military bills out of any moneys in the military fund not otherwise appropriated, and from such allowance ~~((he))~~ the enrolling officer must pay ~~((his))~~ the assistant or assistants.

Sec. 60. Section 6, chapter 108, Laws of 1895 as amended by section 9, chapter 134, Laws of 1909 and RCW 38.44.060 are each amended to read as follows:

All civil officers in each county, city and town shall allow persons authorized under ~~((this act))~~ RCW 38.20.040 and 38.44.020 through 38.44.060 to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in RCW 38.44.040, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his or her knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty.

Sec. 61. Section 4, chapter 277, Laws of 1953 as amended by section 1, chapter 181, Laws of 1953 and RCW 38.48.050 are each amended to read as follows:

The legislature hereby expresses its intention to secure to this state the benefits of the act of congress entitled the "National Defense Facilities Act" ~~((64 Stat. 829, U.S.C. Title 50, section 883))~~ (10 U.S.C. Sec. 2231, et seq., as amended), and the state military department shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress for the acquisition, construction, expansion, rehabilitation or conversion of facilities necessary for the administration and training of units of the state military

department and reserve components of the armed forces of the United States. The provisions of the said act of congress are hereby accepted by this state and this state will observe and comply with the requirements thereof.

NEW SECTION. Sec. 62. The following acts or parts of acts are each repealed:

- (1) Section 44, chapter 130, Laws of 1943 and RCW 38.08.080;
- (2) Section 10, page 74, Laws of 1866, section 2351, Code of 1881, section 4, chapter 135, Laws of 1979 ex. sess. and RCW 38.40.071;
- (3) Section 39, chapter 130, Laws of 1943 and RCW 38.40.080; and
- (4) Section 89, chapter 130, Laws of 1943 and RCW 38.40.160.

Passed the Senate February 22, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 20

[Substitute Senate Bill No. 5088]

COMMERCIAL TELEPHONE SOLICITATION REGULATION

AN ACT Relating to telephone solicitation; amending RCW 9A.82.010 and 63.14.154; adding a new chapter to Title 19 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but entails special risks and poses potential for abuse. The legislature finds that the widespread practice of fraudulent commercial telephone solicitation is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the commercial use of telephones must be regulated by law.

NEW SECTION. Sec. 2. Unfair and deceptive telephone solicitation is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 3. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor.

(b) A person making calls for religious, charitable, political, or other noncommercial purposes.

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling.

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser.

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title 75 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

NEW SECTION. Sec. 4. (1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any residence which will be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

NEW SECTION. Sec. 5. (1) In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing. Prior to doing business in this state, a commercial telephone solicitor shall register with the department of licensing. Doing business in this state includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

(2) The department of licensing, in registering commercial telephone solicitors, shall have the authority to require the submission of information necessary to assist in identifying and locating a commercial telephone solicitor, including past business history, prior judgments, and such other information as may be useful to purchasers.

(3) The department of licensing shall issue a registration number to the commercial telephone solicitor.

(4) It is a violation of this chapter for a commercial telephone solicitor to:

(a) Fail to maintain a valid registration;

(b) Advertise that one is registered as a commercial telephone solicitor or to represent that such registration constitutes approval or endorsement by any government or governmental office or agency;

(c) Provide inaccurate or incomplete information to the department of licensing when making a registration application; or

(d) Represent that a person is registered or that such person has a valid registration number when such person does not.

(5) An annual registration fee shall be assessed by the department of licensing, the amount of which shall be determined at the discretion of the director of the department of licensing, and which shall be reasonably related to the cost of administering the provisions of this chapter.

NEW SECTION. Sec. 6. If the director of the department of licensing determines that a commercial telephone solicitor has failed to register, the director may issue an order in accordance with chapter 34.05 RCW imposing a civil penalty in an amount which may not exceed five thousand dollars.

NEW SECTION. Sec. 7. Each commercial telephone solicitor shall appoint the director of the department of licensing as an agent to receive civil process under this chapter if the commercial telephone solicitor has no properly registered agent, if the agent has resigned, or if the agent cannot, after reasonable diligence, be found.

NEW SECTION. Sec. 8. The director of the department of licensing may make rules, create forms, and issue orders as necessary to carry out the provisions of this chapter, pursuant to chapter 34.05 RCW.

NEW SECTION. Sec. 9. The director of the department of licensing may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter.

NEW SECTION. Sec. 10. It is a violation of this chapter for a commercial telephone solicitor to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment over any other for unfair or deceptive reasons.

NEW SECTION. Sec. 11. (1) Within the first minute of the telephone call, a commercial telephone solicitor or salesperson shall:

(a) Identify himself or herself, the company on whose behalf the solicitation is being made, the property, goods, or services being sold; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates he or she does not wish to continue the conversation.

(2) If at any time during the telephone contact, the purchaser states or indicates that he or she does not wish to be called again by the commercial telephone solicitor or wants to have his or her name and individual telephone number removed from the telephone lists used by the commercial telephone solicitor:

(a) The commercial telephone solicitor shall not make any additional commercial telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The commercial telephone solicitor shall not sell or give the called party's name and telephone number to another commercial telephone solicitor: **PROVIDED**, That the commercial telephone solicitor may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(3) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to residential customers; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

(4) If a sale or an agreement to purchase is completed, the commercial telephone solicitor must inform the purchaser of his or her cancellation rights as enunciated in this chapter, state the registration number issued by the department of licensing, and give the street address of the seller.

(5) If, at any time prior to sale or agreement to purchase, the commercial telephone solicitor's registration number is requested by the purchaser, it must be provided.

(6) All oral disclosures required by this section shall be made in a clear and intelligible manner.

NEW SECTION. Sec. 12. (1) A purchase of property, goods, or services ordered as a result of a commercial telephone solicitation as defined in this chapter, if not followed by a written confirmation, is not final. The confirmation must contain an explanation of the consumer's rights under this section and a statement indicating where notice of cancellation should be sent. The purchaser may give notice of cancellation to the seller in writing within three business days after receipt of the confirmation. If the commercial telephone solicitor has not provided an address for receipt of such

notice, cancellation is effective by mailing the notice to the department of licensing.

(2) Notice of cancellation shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the name, address, and telephone number of the purchaser and the purchaser's stated intention not to be bound by the sale.

(3) If a commercial telephone solicitor or a seller, if different, violates this chapter in making a sale, or fails to deliver an item within forty-two calendar days, the contract is voidable by giving written notice to the seller and the purchaser is entitled to a return from the seller within fourteen days of all consideration paid. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the seller, by providing or guaranteeing payment for return shipping. If such payment is not provided or guaranteed, the purchaser may keep without further obligation the items received.

(4) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this chapter is against public policy and shall be unenforceable: PROVIDED, That an agreement between a purchaser and seller to extend the delivery time of an item to more than forty-two days shall be enforceable if the seller has a reasonable basis to expect that he or she will be unable to ship the item within forty-two days and if the agreement is included in the terms of the written confirmation.

(5) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this chapter, such contract shall be enforceable, and not in violation of this chapter: PROVIDED, That all rights under such a contract or agreement to purchase must be specifically stated in a written confirmation sent pursuant to this section.

(6) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers.

NEW SECTION. Sec. 13. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW.

NEW SECTION. Sec. 14. A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation.

NEW SECTION. Sec. 15. No salesperson shall solicit purchasers on behalf of a commercial telephone solicitor who is not currently registered with the department of licensing pursuant to this chapter. Any salesperson who violates this section is guilty of a misdemeanor.

NEW SECTION. Sec. 16. (1) Except as provided in section 15 of this act, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor shall be guilty of the following:

If the value of a transaction made in violation of section 4(1) of this act is:

- (a) Less than fifty dollars, the person shall be guilty of a misdemeanor;
- (b) Fifty dollars or more, then such person shall be guilty of a gross misdemeanor; and
- (c) Two hundred fifty dollars or more, then such person shall be guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a class C felony or a gross misdemeanor.

Sec. 17. Section 1, chapter 270, Laws of 1984 as last amended by section 5, chapter 33, Laws of 1988 and RCW 9A.82.010 are each amended to read as follows:

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

(1) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(2) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(3) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(4) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(5) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(6) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(7) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(8) "Dealer in property" means a person who buys and sells property as a business.

(9) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(11) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(12) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(13) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(14) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

- (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;
- (f) Child selling or child buying, as defined in RCW 9A.64.030;
- (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

- (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (j) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (k) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (l) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (n) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (p) Leading organized crime, as defined in RCW 9A.82.060;
- (q) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
- (r) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (s) Promoting pornography, as defined in RCW 9.68.140;
- (t) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (u) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (v) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (w) Assault, as defined in RCW 9A.36.011 and 9A.36.021; ((or))
- (x) A pattern of equity skimming, as defined in RCW 61.34.020; or
- (y) Commercial telephone solicitation in violation of section 4(1) of this act.

(15) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to

any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(16) "Records" means any book, paper, writing, record, computer program, or other material.

(17) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(18) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

(19)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest shall be considered to be located where the real property owned by the trustee is located.

(20) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(21) (a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under subsection(21)(a)(i) or (ii) of this section.

- (b) "Trustee" does not mean a person appointed or acting as:
- (i) A personal representative under Title 11 RCW;
 - (ii) A trustee of any testamentary trust;
 - (iii) A trustee of any indenture of trust under which a bond is issued;

or

- (iv) A trustee under a deed of trust.

Sec. 18. Section 12, chapter 234, Laws of 1967 as amended by section 4, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.154 are each amended to read as follows:

(1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach:

(a) If the retail installment transaction was entered into by the buyer and solicited in person or by a commercial telephone solicitation as defined by this act by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(c) By sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation.

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. The effective date of this act shall be January 1, 1990.

NEW SECTION. Sec. 21. Sections 1 through 16 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 22. The attorney general shall prepare a notice to be sent to all businesses in industries known to engage in commercial telephone soliciting informing them of the provisions of this act. The notice shall be sent by the department of revenue and shall be included in a mailing of business tax return forms prior to the effective date of sections 1 through 16 of this act.

Passed the Senate March 2, 1989.

Passed the House March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 21

[House Bill No. 1010]

LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS—DISABILITY LEAVE

AN ACT Relating to disability leave supplement for law enforcement officers and fire fighters; amending RCW 41.04.510; repealing section 9, chapter 462, Laws of 1985 (uncodified); and declaring an emergency.

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

Sec. 1. Section 3, chapter 462, Laws of 1985 and RCW 41.04.510 are each amended to read as follows:

The disability leave supplement shall be paid as follows:

(1) The disability leave supplement shall begin on the sixth ~~((day of absence from work caused by))~~ calendar day from the date of the injury or illness which entitles the employee to benefits under RCW 51.32.090. For the purposes of this section, the day of injury shall constitute the first calendar day.

(2) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.

(3) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be paid by the employer.

If an employee has no accrued paid leave at the time of an injury or illness which entitles him to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section.

NEW SECTION. Sec. 2. Section 9, chapter 462, Laws of 1985 (uncodified) is repealed.

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

Passed the House February 6, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 22

[Substitute Senate Bill No. 5214]

ABUSE AND NEGLECT REPORTING—CHILDREN, DEPENDENT ADULTS, AND DEVELOPMENTALLY DISABLED

AN ACT Relating to abuse and neglect reporting; and reenacting and amending RCW 26.44.030.

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

Sec. 1. Section 1, chapter 39, Laws of 1988 and section 2, chapter 142, Laws of 1988 and RCW 26.44.030 are each reenacted and amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040. The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect.

(2) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(3) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident (~~(in writing)~~) to the proper law enforcement agency. In emergency cases, where the child,

adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(4) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(5) Any county prosecutor or city attorney receiving a report under subsection (4) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(6) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(7) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents

fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(8) Persons or agencies exchanging information under subsection (5) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(9) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(10) Upon receiving a report of incidents, conditions, or circumstances of child abuse and neglect, the department shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(11) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(12) The department of social and health services shall, within funds appropriated for this purpose, use a risk assessment tool when investigating child abuse and neglect referrals. The tool shall be used, on a pilot basis, in three local office service areas. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall report to the ways and means committees of the senate and house of representatives on the use of the tool by December 1, ((1988)) 1989. The report shall include recommendations on the continued use and possible expanded use of the tool.

(13) Upon receipt of such report the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

Passed the Senate March 15, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 23

[House Bill No. 1249]

MARINE PLASTIC DEBRIS ACTION PLAN

AN ACT Relating to plastic in the marine environment; adding a new chapter to Title 79 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner of public lands appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state.

NEW SECTION. Sec. 2. As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner of public lands by the marine plastic debris task force.

NEW SECTION. Sec. 3. The department shall have the authority to coordinate implementation of the plan with appropriate state agencies including the parks and recreation commission and the departments of ecology, fisheries, and wildlife. The department is authorized to promulgate, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris.

NEW SECTION. Sec. 4. The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter.

NEW SECTION. Sec. 5. The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues.

NEW SECTION. Sec. 6. The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds hereby appropriated to carry out the purposes of this chapter.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act shall constitute a new chapter in Title 79 RCW.

Passed the House March 9, 1989.

Passed the Senate March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 24

[Senate Bill No. 5037]

DOMESTIC INSURERS—BOARDS OF DIRECTORS—NATIONALITY REQUIREMENTS

AN ACT Relating to directors of domestic insurers; and amending RCW 48.07.050.

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

Sec. 1. Section .07.05, chapter 79, Laws of 1947 as last amended by section 3, chapter 364, Laws of 1985 and RCW 48.07.050 are each amended to read as follows:

Not less than three-fourths of the directors of an incorporated domestic insurer shall be United States or Canadian citizens, and a majority of the board of directors of a mutual life insurer shall be residents of this state. The directors of a domestic insurer or domestic insurance holding corporation may be removed with cause by a vote of a majority of its voting capital

stock or members (if a mutual insurer) at a valid meeting and said directors may be removed without cause by a vote of sixty-seven percent of its voting capital stock or members (if a mutual insurer) at a valid meeting.

Passed the Senate February 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 25

[Senate Bill No. 5152]

INSURANCE—FORM AND RATE FILINGS

AN ACT Relating to insurance form and rate filings; amending RCW 48.18.100, 48.18-.140, 48.19.030, 48.19.040, 48.19.060, 48.19.100, 48.19.120, and 48.19.280; repealing RCW 48.19.440; and providing an effective date.

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

Sec. 1. Section .18.10, chapter 79, Laws of 1947 as amended by section 16, chapter 181, Laws of 1982 and RCW 48.18.100 are each amended to read as follows:

(1) No insurance policy form other than surety bond forms, or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form shall be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section shall not apply to policies, riders or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American Academy of Actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by such insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18-.110. This subsection shall not apply to certain types of policy forms designated by the commissioner by rule.

(3) Every filing that does not contain a certification pursuant to subsection (2) of this section shall be made not less than ~~((fifteen))~~ thirty days in advance of any such issuance, delivery, or use. At the expiration of such ~~((fifteen))~~ thirty days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial ~~((fifteen-day))~~ thirty-day period. At the expiration

of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may withdraw any such approval at any time for cause. By approval of any such form for immediate use, the commissioner may waive any unexpired portion of such initial ~~((fifteen-day))~~ thirty-day waiting period.

(4) The commissioner's order disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(5) No such form shall knowingly be so issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper, any insurance document or form or type thereof as specified in such order, to which in his opinion this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization. Deviations from such organization are permitted only when filed with the commissioner in accordance with this chapter.

Sec. 2. Section .18.14, chapter 79, Laws of 1947 as amended by section 11, chapter 193, Laws of 1957 and RCW 48.18.140 are each amended to read as follows:

(1) The written instrument, in which a contract of insurance is set forth, is the policy.

(2) A policy shall specify:

(a) The names of the parties to the contract. The insurer's name shall be clearly shown in the policy.

(b) The subject of the insurance.

(c) The risk insured against.

(d) The time at which the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) A statement of the premium, and if other than life, disability, or title insurance, the premium rate where applicable.

(f) The conditions pertaining to the insurance.

(3) If under the contract the exact amount of premiums is determinable only at termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be ~~((furnished any policy examining bureau having jurisdiction or to the insured upon request))~~ specified in the policy.

(4) This section shall not apply to surety insurance contracts.

Sec. 3. Section .19.03, chapter 79, Laws of 1947 and RCW 48.19.030 are each amended to read as follows:

Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions:

(1) In the case of insurances under standard fire policies and that part of marine and transportation insurances not exempted under RCW 48.19.010, manual, minimum, class or classification rates, rating schedules or rating plans, shall be made and adopted; except as to specific rates on inland marine risks individually rated, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Due consideration in making rates for all insurances shall be given to:

(a) Past and prospective loss experience within ~~((and outside))~~ this state ~~((; and in the case of rates for fire insurance, to the loss experience of insurers as to insurance against fire during a period of not less than the most recent five-year period for which such experience is available))~~ for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state.

(b) Conflagration and catastrophe hazards, where present.

(c) A reasonable margin for underwriting profit and contingencies.

(d) Dividends, savings and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(e) Past and prospective operating expenses.

(f) Past and prospective investment income.

(g) All other relevant factors within and outside this state.

(4) In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020 uniformity among insurers in any matter within the scope of this section is neither required nor prohibited.

Sec. 4. Section .19.04, chapter 79, Laws of 1947 as amended by section 14, chapter 32, Laws of 1983 1st ex. sess. and RCW 48.19.040 are each amended to read as follows:

(1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual (~~(of classifications)~~), manual of rules and rates, (~~(and every)~~) rating plan (~~(as to surety insurances, and every)~~), rating schedule, minimum rate, class rate, and rating rule (~~(as to other insurances)~~), and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall (~~(state its proposed effective date and shall)~~) indicate the (~~(character)~~) type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. (~~(When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, he may require the insurer to furnish the information upon which it supports the filing.)~~) An insurer (~~(may)~~) or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing(;;);

(b) (~~(the experience of other insurers or rating organizations, or)~~) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) (~~(any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection only after the filing becomes effective.)~~) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit loss experience for similar exposures of other insurers or of a rating organization.

(4) Every such filing shall state its proposed effective date.

(5) General liability, professional liability, and commercial automobile insurance rate filings must be submitted or updated at least once in each fifteen-month interval so that the commissioner has timely supporting information necessary to determine that the current schedules, manuals, rules, rates, and rating plans meet the requirements of RCW 48.19.020.

(6) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective.

(7) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090.

Sec. 5. Section .19.06, chapter 79, Laws of 1947 and RCW 48.19.060 are each amended to read as follows:

(1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070:

(a) No such filing shall become effective within ~~((fifteen))~~ thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or ~~((any))~~ part thereof as to a filing ~~((which))~~ that he has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

~~((3) This section does not apply to casualty insurance.))~~

Sec. 6. Section .19.10, chapter 79, Laws of 1947 and RCW 48.19.100 are each amended to read as follows:

If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he finds the filing fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. ~~((This section does not apply to casualty insurance.))~~

Sec. 7. Section .19.12, chapter 79, Laws of 1947 as amended by section 15, chapter 32, Laws of 1983 1st ex. sess. and RCW 48.19.120 are each amended to read as follows:

(1) If at any time subsequent to the applicable review period provided in RCW 48.19.060~~(;)~~ or 48.19.110, ~~((or 48.19.440;))~~ the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his order specifying in what respect he finds that such filing fails to meet the requirements of this chapter, and

stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding the hearing, he shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section.

Sec. 8. Section .19.28, chapter 79, Laws of 1947 as amended by section 14, chapter 193, Laws of 1957 and RCW 48.19.280 are each amended to read as follows:

(1) Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization~~((and shall not deviate therefrom except as provided in this section))~~. Deviations from the organization's filings are permitted only when filed with the commissioner in accordance with this chapter.

~~(2) ((Any such subscriber may make written application to the commissioner for permission to file a deviation, and shall at the same time send a copy of the application to the rating organization. The application shall specify the deviation desired, and the basis thereof. In the case of deviations as specified in subsection (4) of this section, the application shall be accompanied by the data upon which the applicant relies. The commissioner shall forthwith set a date for a hearing on the application and give notice thereof to the applicant and to the rating organization. If the rating organization informs the commissioner that it does not desire a hearing he may, upon consent of the applicant, waive the hearing.~~

~~(3) As to fire insurance under standard form fire policies, and the following insurances when issued as part of a standard form fire policy, any such deviation shall be only by a uniform percentage of addition to or decrease from all rates resulting from all filings relative to such insurance made by the rating organization on behalf of such applicant and then in effect:~~

~~(a) Additional property insurance coverages, or~~

~~(b) Coverages including any kind of insurance in addition to fire for a single undivided premium:~~

~~In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the applicable principles for rate making as provided in RCW 48.19.030:~~

~~(4) As to insurance other than that designated in subsection (3) of this section, any such deviation shall be only by a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (b) for which separate expense provisions are included in the filings of the rating organization.~~

~~(5) If upon such hearing the commissioner finds the proposed deviation to be justified, and that premiums and rates resulting therefrom would not be inadequate, excessive, or unfairly discriminatory, he shall issue his order permitting the deviation to be filed and such deviation shall thereupon become effective. If he finds otherwise, he shall issue his order denying the application.~~

~~(6) Each deviation permitted to be filed shall be effective for a period of not less than one year from the date of such permission unless terminated sooner with the approval of the commissioner.) Every such deviation shall terminate upon a material change of the basic rate from which the deviation is made. The commissioner shall determine whether a change of the basic rate is so material as to require such termination of deviations.~~

~~((7) This section does not apply to casualty insurance.)~~

NEW SECTION. Sec. 9. Section .34.02, chapter 79, Laws of 1947 and RCW 48.19.440 are each repealed.

NEW SECTION. Sec. 10. This act shall take effect on September 1, 1989.

Passed the Senate March 8, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 26

[Substitute Senate Bill No. 5014]
POLICE DOGS

AN ACT Relating to police dogs; and amending RCW 4.24.410, 9A.76.200, and 16.08.080.

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

Sec. 1. Section 1, chapter 22, Laws of 1982 and RCW 4.24.410 are each amended to read as follows:

(1) As used in this section:

(a) "Police dog" means a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

(b) "Dog handler" means a law enforcement officer who has successfully completed training as prescribed by the Washington state criminal justice training commission in police dog handling.

(2) Any dog handler who uses a police dog in the line of duty (~~(in accordance with standards established by the law enforcement agency for which he works)~~) in good faith is immune from civil action for damages arising out of such ~~((activities))~~ use of the police dog.

Sec. 2. Section 2, chapter 22, Laws of 1982 and RCW 9A.76.200 are each amended to read as follows:

(1) A person is guilty of harming a police dog if he ~~((wilfully))~~ maliciously injures, disables, shoots, or kills by any means any dog ~~((used by a peace officer in discharging or attempting to discharge any legal duty or power of his office))~~ that the person knows or has reason to know to be a police dog, as defined in RCW 4.24.410, whether or not the dog is actually engaged in police work at the time of the injury.

(2) Harming a police dog is a class C felony.

Sec. 3. Section 2, chapter 94, Laws of 1987 and RCW 16.08.080 are each amended to read as follows:

(1) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW 16.08.090 and 16.08.100 shall not apply to police dogs ((used by law enforcement officials for police work)) as defined in RCW 4.24.410.

(2) The animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least fifty thousand dollars, payable to any person injured by the vicious dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(3)(a) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(b) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(c) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(4) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs.

Passed the Senate February 20, 1989.

Passed the House March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 27

[Senate Bill No. 5277]

FIRE PROTECTION DISTRICTS—SERVICE CHARGES—SIX YEAR LIMIT

AN ACT Relating to fire protection district service charges; and amending RCW 52.18.050.

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

Sec. 1. Section 5, chapter 126, Laws of 1974 ex. sess. as amended by section 5, chapter 325, Laws of 1987 and RCW 52.18.050 are each amended to read as follows:

(1) Any service charge authorized by this chapter shall not be effective unless a proposition to impose the service charge is approved by a sixty percent majority of the voters of the district voting at a general election or at a special election called by the district for that purpose, held within the fire protection district. An election held pursuant to this section shall be held not more than twelve months prior to the date on which the first such charge is to be assessed: PROVIDED, That a service charge approved at an election shall not remain in effect for a period of more than ~~((three))~~ six years unless subsequently reapproved by the voters.

(2) The ballot shall be submitted so as to enable the voters favoring the authorization of a fire protection district service charge to vote "Yes" and those opposed thereto to vote "No," and the ballot shall be:

"Shall county fire protection district No. be authorized to impose service charges each year for up to a ~~((three-year))~~ six-year period, not to exceed an amount equal to

sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES

NO

Passed the Senate March 3, 1989.

Passed the House March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 28

[Substitute Senate Bill No. 5099]

STATE PATROL OFFICERS—SUSPENSION WITHOUT PAY

AN ACT Relating to suspension without pay of a state patrol officer; and amending RCW 43.43.080 and 43.43.090.

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

Sec. 1. Section 43.43.080, chapter 8, Laws of 1965 and RCW 43.43.080 are each amended to read as follows:

~~((Pending a hearing, the chief of the patrol may suspend the officer complained of, and the officer may, within ten days after being served with the complaint, either submit a written resignation or file written notice of his desire to waive a hearing.~~

~~In the event that a letter of resignation is submitted, it shall be accepted without prejudice:))~~ When the complaint served upon an officer is of a criminal nature calling for the discharge of the officer, the chief of the patrol may immediately suspend the officer without pay pending a trial board hearing. The board shall be convened no later than forty-five days from the date of suspension. However, this does not preclude the granting of a mutually agreed upon extension; in such cases the officer shall remain on suspension without pay.

An officer complained of may waive a hearing and accept the proposed discipline by written notice to the chief of the patrol.

Sec. 2. Section 43.43.090, chapter 8, Laws of 1965 as amended by section 3, chapter 141, Laws of 1984 and RCW 43.43.090 are each amended to read as follows:

At the hearing, an administrative law judge appointed under chapter 34.12 RCW shall be the presiding officer, and shall make all necessary rulings in the course of the hearing, but shall not be entitled to vote.

The complainant and the officer complained of may submit evidence, and be represented by counsel, and a full and complete record of the proceedings, and all testimony, shall be taken down by a stenographer.

After hearing, the findings of the trial board shall be submitted to the chief. Such findings shall be final ~~((in the case of acquittal))~~ if the charges

are not sustained. In the event (~~(of conviction)~~) the charges are sustained the chief may determine the proper disciplinary action and declare it by written order served upon the officer complained of.

Passed the Senate February 20, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 29

[Substitute Senate Bill No. 5266]

VOCATIONAL EDUCATION—CERTIFICATION OF INSTRUCTORS

AN ACT Relating to providing baccalaureate and masters degree equivalencies for certification of vocational instructors; and amending RCW 28A.70.040, 28A.70.042, and 28A.70.005.

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

Sec. 1. Section 212, chapter 525, Laws of 1987 and RCW 28A.70.040 are each amended to read as follows:

(1) The state board of education shall adopt rules providing that, except as provided in this section, all individuals qualifying for an initial-level teaching certificate after August 31, 1992, shall possess a baccalaureate degree in the arts, sciences, and/or humanities and have fulfilled the requirements for teacher certification pursuant to RCW 28A.04.120 (1) and (2). The state board of education shall develop and adopt rules establishing baccalaureate degree equivalency standards for certification of vocational instructors performing instructional duties and acquiring initial level certification after August 31, 1992. However, candidates for grades preschool through six certificates shall have fulfilled the requirements for a major as part of their baccalaureate degree. If the major is in early childhood education, elementary education, or special education, the candidate must have at least thirty quarter hours or twenty semester hours in one academic field.

(2) The state board of education shall study the impact of eliminating the major in education under subsection (1) of this section and submit a report to the legislature by January 15, 1990. The report shall include a recommendation on whether the major in education under subsection (1) of this section should be eliminated.

(3) The initial certificate shall be valid for two years.

(4) Certificate holders may renew the certificate for a three-year period by providing proof of acceptance and enrollment in an approved masters degree program. A second renewal, for a period of two years, may be granted upon recommendation of the degree-granting institution and if the certificate holder can demonstrate substantial progress toward the completion of the masters degree and that the degree will be completed within the

two-year extension period. Under no circumstances may an initial certificate be valid for a period of more than seven years.

Sec. 2. Section 215, chapter 525, Laws of 1987 and RCW 28A.70.042 are each amended to read as follows:

(1) The state board of education shall implement rules providing that all teachers performing instructional duties and acquiring professional level certificate status after August 31, 1992, shall possess, as a requirement of professional status, a masters degree in teaching, or a masters degree in the arts, sciences, and/or humanities.

(2) The state board of education shall develop and adopt rules establishing masters degree equivalency standards for vocational instructors performing instructional duties and acquiring professional level certification after August 31, 1992.

Passed the Senate March 8, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 30

[House Bill No. 1024]

VICTIMS AND WITNESSES—NOTIFICATION OF ESCAPE, RELEASE, OR FURLOUGH OF SEX OFFENDERS

AN ACT Relating to victims/witness enhancement; and amending RCW 9.94A.155 and 9.94A.156.

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

Sec. 1. Section 1, chapter 346, Laws of 1985 and RCW 9.94A.155 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, work release placement, furlough, or escape, if such notice has been requested in writing about a specific inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030, to all of the following:

(a) The chief of police of the city, if any, in which the inmate will reside, if known, or in which placement will be made in a work release program;

(b) The sheriff of the county in which the inmate will reside, if known, or in which placement will be made in a work release program;

(c) The victim, if any, of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(d) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(e) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030 escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim, if any, of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(4) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(5) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

Sec. 2. Section 2, chapter 346, Laws of 1985 and RCW 9.94A.156 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.155 and 9.94A.157.

Passed the House February 8, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 31

[Substitute Senate Bill No. 5041]

INMATE TELEPHONE CALL MONITORING

AN ACT Relating to electronic monitoring of inmate telephone calls within state correctional facilities; and adding a new section to chapter 9.73 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.73 RCW to read as follows:

(1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the Washington state department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a Washington state correctional facility. For the purposes of this section, a "Washington state correctional facility" is defined as any and all facilities that are under the control and authority of the Washington state department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The Washington state department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a Washington state correctional facility as provided for by this section:

(a) Before the implementation of this section, all inmates or residents of a Washington state correctional facility shall be notified in writing that, as of the effective date of this section, their telephone conversations may be intercepted, recorded, and/or divulged.

(b) Unless otherwise provided for in this section, after intercepting or recording a telephone conversation, only the superintendent and his or her designee shall have access to that recording.

(c) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(d) All telephone conversations that are recorded according to this chapter, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department is

charged with the responsibility of drafting or developing policies and procedures to implement this statute.

Passed the Senate March 1, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 32

[Substitute House Bill No. 1658]

SEXUAL EXPLOITATION OF CHILDREN

AN ACT Relating to sexual exploitation of children; amending RCW 9.68A.011, 9.68A.040, 9.68A.050, 9.68A.060, 9.68A.070, 9.68A.080, 9.68A.090, 9.68A.100, and 9.68A.110; and prescribing penalties.

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

Sec. 1. Section 2, chapter 262, Laws of 1984 and RCW 9.68A.011 are each amended to read as follows:

Unless the context clearly indicates otherwise, the definitions in this section apply throughout ~~((the [this]))~~ this chapter.

(1) To "photograph" means to make a print, negative, slide, motion picture, or videotape. A "photograph" means any tangible item produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation(~~(, for the purpose of sexual stimulation of the viewer));~~);

(d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(4) "Minor" means any person under eighteen years of age.

(5) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

Sec. 2. Section 3, chapter 262, Laws of 1984 and RCW 9.68A.040 are each amended to read as follows:

(1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is((:

~~(a)) a class B felony punishable under chapter 9A.20 RCW ((if the minor exploited is less than sixteen years old at the time of the offense; and~~

~~(b) A class C felony punishable under chapter 9A.20 RCW if the minor exploited is at least sixteen years old but less than eighteen years old at the time of the offense)).~~

Sec. 3. Section 4, chapter 262, Laws of 1984 and RCW 9.68A.050 are each amended to read as follows:

A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct

is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((3) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 4. Section 5, chapter 262, Laws of 1984 and RCW 9.68A.060 are each amended to read as follows:

~~((1))~~ A person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 5. Section 6, chapter 262, Laws of 1984 and RCW 9.68A.070 are each amended to read as follows:

~~((1))~~ A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a gross misdemeanor.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 6. Section 7, chapter 262, Laws of 1984 and RCW 9.68A.080 are each amended to read as follows:

((+)) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

~~((2) As used in this section, "minor" means a person under sixteen years of age.))~~

Sec. 7. Section 8, chapter 262, Laws of 1984 as amended by section 2, chapter 319, Laws of 1986 and RCW 9.68A.090 are each amended to read as follows:

((+)) A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under eighteen years of age.))~~

Sec. 8. Section 9, chapter 262, Laws of 1984 and RCW 9.68A.100 are each amended to read as follows:

((+)) A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW.

~~((2) As used in this section, "minor" means a person under eighteen years of age.))~~

Sec. 9. Section 10, chapter 262, Laws of 1984 as amended by section 3, chapter 319, Laws of 1986 and RCW 9.68A.110 are each amended to read as follows:

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100. This chapter does not apply to individual case treatment in a recognized medical facility or individual case treatment by a psychiatrist or psychologist licensed under Title 18 RCW, or to lawful conduct between spouses.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.050, 9.68A.060, or 9.68A.090, ((or 9.68A.100;)) it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least eighteen years of age based on declarations by the alleged victim.

~~(4) ((In a prosecution under RCW 9.68A.050 or 9.68A.060, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least sixteen years of age based on declarations by the alleged victim))~~ In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, it shall be an affirmative defense that the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, the state is not required to establish the identity of the alleged victim.

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 the House March 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 33

[House Bill No. 1170]

TESTAMENTARY POWERS OF APPOINTMENT

AN ACT Relating to powers of appointment; and amending RCW 11.95.060.

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

Sec. 1. Section 36, chapter 30, Laws of 1985 and RCW 11.95.060 are each amended to read as follows:

(1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may

grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power ((and that identifies the instrument granting the power and its date)). Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised.

Passed the House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 8, 1989.

CHAPTER 34

[Substitute House Bill No. 1169]

DECEDENTS' ESTATES—BENEFICIARIES—DISCLAIMER OF INTEREST

AN ACT Relating to disclaimers of interests by beneficiaries; amending RCW 11.86.090; adding new sections to chapter 11.86 RCW; and repealing RCW 11.86.010, 11.86.020, 11.86.030, 11.86.040, 11.86.050, 11.86.060, and 11.86.070.

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) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (a) By intestate succession;
- (b) Under a will;
- (c) Under a trust;
- (d) By succession to a disclaimed interest;
- (e) By virtue of an election to take against a will;
- (f) By creation of a power of appointment;
- (g) By exercise or nonexercise of a power of appointment;
- (h) By an inter vivos gift, whether outright or in trust;
- (i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;
- (j) Under an insurance or annuity contract;
- (k) By surviving the death of another joint tenant;
- (l) Under an employee benefit plan;
- (m) Under an individual retirement account, annuity, or bond;
- (n) Under a community property agreement; or
- (o) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7) "Date of the transfer" means:

(a) For an inter vivos transfer, the date of the creation of the interest;
or

(b) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

A joint tenancy interest of a deceased joint tenant shall be deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy.

NEW SECTION. Sec. 2. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in section 3 of this act.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney in fact if authorized under a durable power of attorney under chapter 11.94 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a guardian, no order has been issued under RCW 11.92.140 determining that the disclaimer is not in the best interests of the beneficiary.

NEW SECTION. Sec. 3. (1) The disclaimer shall:

(a) Be in writing;

(b) Be signed by the disclaimant;

(c) Identify the interest to be disclaimed; and

(d) State the disclaimer and the extent thereof.

(2) The disclaimer shall be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

(a) The date the beneficiary attains the age of twenty-one years;

(b) The date of the transfer; or

(c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee of two dollars.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated.

NEW SECTION. Sec. 4. (1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the disclaimer directs to the contrary, the beneficiary may receive another interest in the property subject to the disclaimer.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Notwithstanding subsection (1) or (3) of this section, no beneficiary whose interest has been disclaimed shall be deemed to have died for purposes of RCW 11.12.120.

NEW SECTION. Sec. 5. A beneficiary may not disclaim an interest if:

(1) The beneficiary has accepted the interest or a benefit thereunder;

(2) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

(3) The interest has been sold or otherwise disposed of pursuant to judicial process; or

(4) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

NEW SECTION. Sec. 6. A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction.

NEW SECTION. Sec. 7. No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in section 5 of this act.

Sec. 8. Section 10, chapter 148, Laws of 1973 and RCW 11.86.090 are each amended to read as follows:

Any interest which exists on June 7, 1973 but which has not then become indefeasibly (~~fixed both in quality and quantity~~) vested, or the taker of which has not then become finally ascertained, or of the existence of the

transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in ((RCW 11.86.030 and 11.86.040)) section 3 of this act. However, for the purposes of section 3(2) of this act, the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer.

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) Section 2, chapter 148, Laws of 1973, section 42, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.010;

(2) Section 3, chapter 148, Laws of 1973, section 43, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.020;

(3) Section 4, chapter 148, Laws of 1973, section 44, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.030;

(4) Section 5, chapter 148, Laws of 1973, section 45, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.040;

(5) Section 6, chapter 148, Laws of 1973, section 46, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.050;

(6) Section 7, chapter 148, Laws of 1973, section 47, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.060; and

(7) Section 8, chapter 148, Laws of 1973, section 48, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.070.

NEW SECTION. Sec. 10. Sections 1 through 7 of this act are each added to chapter 11.86 RCW.

Passed the House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 35

[House Bill No. 1350]

MARITAL DEDUCTION GIFTS—COMMON DISASTERS—EFFECT ON SURVIVORSHIP REQUIREMENTS

AN ACT Relating to marital deduction gifts; and amending RCW 11.108.060.

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

Sec. 1. Section 111, chapter 30, Laws of 1985 and RCW 11.108.060 are each amended to read as follows:

If a governing instrument contains a marital deduction gift, whether outright or in trust and whether there is a specific reference to this section, any survivorship requirement expressed in the governing instrument in excess of six months, other than survival by a spouse of a common disaster resulting in the death of the decedent, does not apply to property passing

under a marital deduction gift, and in addition, is limited to a six-month period beginning with the testator's death.

Passed the House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 36

[Substitute Senate Bill No. 5193]

OPTOMETRY—DRUG USE AND AUTHORIZATION TO PRESCRIBE

AN ACT Relating to optometry; and amending RCW 18.53.010, 18.53.140, and 69.41.010.

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

Sec. 1. Section 1, chapter 144, Laws of 1919 as last amended by section 2, chapter 58, Laws of 1981 and RCW 18.53.010 are each amended to read as follows:

(1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method including the use of (~~(pharmaceutical agents)~~) drugs topically applied to the eye for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids and other optical devices, and the treatment with topically applied drugs by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section; and

(d) The ascertainment of the perceptive, neural, muscular or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2) Those persons using (~~(pharmaceutical agents)~~) drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes, an additional minimum

of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by ((a regional or professional accrediting organization and recognized or approved by the accrediting commission for senior colleges and universities of the western association of schools and colleges)) those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use ((pharmaceutical agents)) drugs for diagnostic and therapeutic purposes. Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a schedule of drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

Sec. 2. Section 7, chapter 144, Laws of 1919 as last amended by section 82, chapter 259, Laws of 1986 and RCW 18.53.140 are each amended to read as follows:

It shall be unlawful for any person:

(1) To sell or barter, or offer to sell or barter any license issued by the director; or

(2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or

(3) To alter with fraudulent intent in any material regard such license; or

(4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To practice optometry in this state either for himself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the director of licensing; or

(7) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(8) To use drugs in the ~~((examination of eyes except diagnostic agents, topically applied, known generally as cycloplegics, mydriatics, topical anesthetics, dyes such as florescein, and for emergency use only, miotics, which legend drugs a certified optometrist is authorized to purchase, possess and administer))~~ practice of optometry, except those topically applied for diagnostic or therapeutic purposes; or

(9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time.

Sec. 3. Section 1, chapter 186, Laws of 1973 1st ex. sess. as last amended by section 17, chapter 153, Laws of 1984 and RCW 69.41.010 are each amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(3) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(4) "Dispenser" means a practitioner who dispenses.

(5) "Distribute" means to deliver other than by administering or dispensing a legend drug.

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

(7) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(8) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(9) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(10) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician's assistant under chapter 18.57A RCW, or a physician's assistant under chapter 18.71A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

Passed the Senate March 3, 1989.

Passed the House March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 37

[House Bill No. 1026]

SEA URCHIN FISHERY REGULATED

AN ACT Relating to commercial sea urchin fishing; amending RCW 75.30.050; adding a new section to chapter 75.30 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishermen engaged in sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state.

NEW SECTION. Sec. 2. A new section is added to chapter 75.30 RCW to read as follows:

(1) After October 1, 1989, it is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin endorsement to accompany a shellfish diver license. A sea urchin endorsement to a shellfish diver license issued under RCW 75.28.130(4) shall be limited to those vessels which:

(a) Held a commercial shellfish diver license, excluding clams, between January 1, 1988, and December 31, 1988, or had transferred to the vessel such a license;

(b) Have not transferred the license to another vessel; and

(c) Can establish, by means of dated shellfish receiving documents issued by the department, that twenty thousand pounds of sea urchins were caught and landed under the license during the period of April 1, 1986, through March 31, 1988.

(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea urchin endorsements to shellfish diver licenses issued under RCW 75.28.130(4) may be issued only to vessels:

(a) Which held a sea urchin endorsement to a shellfish diver license during the previous year or had transferred to the vessel such a license; and

(b) From which twenty thousand pounds of sea urchins were caught and landed in this state during the two-year period ending March 31 of an odd-numbered year, as documented by valid shellfish receiving documents issued by the department.

Where failure to obtain the license during the previous year was the result of a license suspension or revocation by the department, the vessel may qualify for a license by establishing that the vessel held such a license during the last year in which it was eligible.

(3) The director may reduce or waive the landing requirement established under subsection (2)(b) of this section upon the recommendation of a board of review established under section 3 of this act. The board of review may recommend a reduction or waiver of the landing requirement in individual cases if in the board's judgment, extenuating circumstances prevent achievement of the landing requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(4) Sea urchin endorsements issued under this section are not transferable from one owner to another owner, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the owner. This restriction applies to all changes in the vessel owner's name on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.

(5) If less than forty-five vessels are eligible for sea urchin endorsements, the director may accept applications for new endorsements. The director shall determine by random selection the successful applicants for the additional endorsements. The number of additional endorsements issued shall be sufficient to maintain up to forty-five vessels in the sea urchin fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin endorsements, based upon recommendations of a board of review established under RCW 75.30.050.

Sec. 3. Section 5, chapter 106, Laws of 1977 ex. sess. as last amended by section 7, chapter 198, Laws of 1986 and RCW 75.30.050 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The salmon charter boat fishing industry in cases involving salmon charter boat licenses or angler permits;

(b) The commercial salmon fishing industry in cases involving commercial salmon licenses;

(c) The commercial crab fishing industry in cases involving Puget Sound crab license endorsements;

(d) The commercial herring fishery in cases involving herring validations; ((and))

(e) The commercial Puget Sound whiting fishery in cases involving Puget Sound whiting license endorsements; and

(f) The commercial sea urchin fishery in cases involving sea urchin endorsements to shellfish diver licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 10, 1989.

Passed the Senate March 31, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 38

[Substitute Senate Bill No. 5213]

ACCOUNTS RECEIVABLE—SIX YEAR LIMIT ON ACTIONS

AN ACT Relating to statutes of limitation; and amending RCW 4.16.040 and 4.16.080.

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

Sec. 1. Section 3, page 363, Laws of 1854 as last amended by section 2, chapter 105, Laws of 1980 and RCW 4.16.040 are each amended to read as follows:

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action upon an account receivable incurred in the ordinary course of business.

(3) An action for the rents and profits or for the use and occupation of real estate.

Sec. 2. Section 4, page 363, Laws of 1854 as last amended by section 1, chapter 127, Laws of 1937 and RCW 4.16.080 are each amended to read as follows:

The following actions shall be commenced within three years:

(1) An action for waste or trespass upon real property;

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

~~((7) An action for seduction and breach of promise to marry:))~~

Passed the Senate March 3, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 39

[House Bill No. 1049]

PROSECUTING ATTORNEYS—PERMISSIBLE PRIVATE PRACTICE

AN ACT Relating to the private practice of law by prosecuting attorneys; and amending RCW 36.27.060.

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

Sec. 1. Section 36.27.060, chapter 4, Laws of 1963 as last amended by section 1, chapter 86, Laws of 1973 1st ex. sess. and RCW 36.27.060 are each amended to read as follows:

(1) The prosecuting attorneys and their deputies of class four counties and counties with population larger than class four counties shall serve full time and except as otherwise provided for in this section shall not engage in the private practice of law~~((PROVIDED, That))~~.

(2) Deputy prosecuting attorneys in counties of the second class, third class, and fourth class may serve part time and engage in the private practice of law if the board of county commissioners so provides.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits a prosecuting attorney or deputy prosecuting attorney in any county from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of a prosecuting attorney, or deputy prosecuting attorney and no services that are performed shall be deemed within the scope of employment of a prosecutor or deputy prosecutor.

Passed the House February 24, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 40

[Substitute House Bill No. 1168]

ESTATE TAX—APPORTIONMENT

AN ACT Relating to the uniform estate tax apportionment act; amending RCW 83.110-.010, 83.110.020, 83.110.030, 83.110.050, 83.110.060, 83.110.090, and 11.98.070; creating a new section; and declaring an emergency.

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

Sec. 1. Section 1, chapter 63, Laws of 1986 and RCW 83.110.010 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "Excise tax" means the federal excise tax imposed by section 4980A(d), or such section as renumbered, of the Internal Revenue Code, which was enacted by section 1133(a) of the tax reform act of 1986, P.L. 99-514 or as subsequently amended, and interest and penalties imposed in addition to the excise tax;

(3) "Fiduciary" means executor, administrator of any description, and trustee;

~~((3))~~ (4) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered from time to time;

(5) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

~~((4))~~ (6) "Persons interested in retirement distributions" means any person determined as of the date the excise tax is due, including a personal representative, guardian, trustee, or beneficiary, entitled to receive, or who has received, by reason of or following the death of a decedent, any property or interest therein which constitutes a retirement distribution as defined in section 4980A(e), or such section as renumbered, of the Internal Revenue Code, but this definition excludes any alternate payee under a qualified domestic relations order as such terms are defined in section 414(p) of the Internal Revenue Code;

(7) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

~~((5))~~ (8) "Qualified heir" means a person interested in the estate who is entitled to receive, or who has received, an interest in qualified real property;

(9) "Qualified real property" means real property for which the election described in section 2032A of the Internal Revenue Code has been made;

(10) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

~~((6))~~ (11) "Tax" means the federal estate tax, the excise tax defined in subsection (2) of this section, and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

Sec. 2. Section 2, chapter 63, Laws of 1986 and RCW 83.110.020 are each amended to read as follows:

(1) Tax other than excise tax. Except as provided in RCW 83.110.090 or subsection (2) of this section, and unless the will, trust, or other dispositive instrument otherwise provides, the tax, but not the excise tax, shall be apportioned among all persons interested in the estate. Except as provided in RCW 83.110.050, the apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. Except as provided in RCW 83.110.050, the values used in determining the tax shall be used for that purpose.

(2) Excise tax. Except as provided in RCW 83.110.030(6) and unless the will, beneficiary designation, trust, or other instrument governing the disposition of property subject to the excise tax otherwise provides, the excise tax shall be apportioned among and charged to the persons interested in retirement distributions on which the excise tax is actually imposed. Each person shall be severally liable for the timely payment of the portion of the excise tax so apportioned to the person. The apportionment shall be made in the proportion that the value of the interest of each person interested in the retirement distributions bears to the total value of the interests of all persons interested in the retirement distributions. The values used in determining the excise tax shall be used for that purpose. In order to facilitate timely payment of the excise tax, the fiduciary shall have the right, but not the obligation, in addition to any other power and consistent with the power granted by RCW 11.98.070(13), to make loans, either secured or unsecured at such interest as the fiduciary may determine, not exceeding the amount of the excise tax so apportioned to the persons liable for payment of the excise tax. If the fiduciary or other person is required to pay the excise tax, the fiduciary or other person shall have the rights of recovery provided in RCW 83.110.040 or otherwise.

Sec. 3. Section 3, chapter 63, Laws of 1986 and RCW 83.110.030 are each amended to read as follows:

(1) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in

RCW 83.110.020 and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in RCW 83.110.020, it may direct apportionment thereof equitably.

(4) If the court finds that the assessment of penalties and interest is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the court in respect thereto is prima facie correct.

(6) In the case where there are successive interests with respect to retirement distributions, the excise tax shall be equitably apportioned by the court having jurisdiction over the administration of the estate among the persons interested in the retirement distributions as defined in RCW 11.110.010(6).

Sec. 4. Section 5, chapter 63, Laws of 1986 and RCW 83.110.050 are each amended to read as follows:

(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result under section 2053(d) of the Internal Revenue Code of 1954 of the United States relates to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) In the case of qualified real property, the apportionment of the tax shall be based on the values that would have been used to determine the tax without regard to section 2032A of the Internal Revenue Code. The reduction in the tax attributable to the application of section 2032A shall inure as follows:

(a) First to the benefit of the qualified heirs in proportion to their relative interests in the qualified real property, until the tax attributable to the qualified real property is reduced to zero;

(b) Then to the qualified heirs in proportion to their relative interests in other property of the estate, until the tax attributable to the property is reduced to zero; and

(c) Then to other persons interested in the estate in proportion to their relative interests in other property of the estate.

(7) Any extension in the payment of a part of the tax under any provision of the Internal Revenue Code shall inure to the benefit of, and the tax subject to the extension shall be equitably apportioned among, the persons receiving the property relating to the extension. Any tax benefit derived from the interest paid with respect to the tax shall be equitably apportioned among the persons receiving the property.

Sec. 5. Section 6, chapter 63, Laws of 1986 and RCW 83.110.060 are each amended to read as follows:

Except as otherwise provided in RCW 83.110.030(6), no interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

Sec. 6. Section 9, chapter 63, Laws of 1986 and RCW 83.110.090 are each amended to read as follows:

If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed in this chapter. Nothing in this chapter affects the right of a personal representative to recover payments due an estate pursuant to the provisions of section 2207A of the Internal Revenue Code (~~(of 1954)~~).

Sec. 7. Section 50, chapter 30, Laws of 1985 and RCW 11.98.070 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by RCW 11.98.070(31);

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to

the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or

officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except a trustee may not delegate all of the trustee's duties and responsibilities, and except that this employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Rely with acquittance on advice of counsel on questions of law; and

(34) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust.

NEW SECTION. Sec. 8. (1) The amendments made in this act with respect to the excise tax imposed under section 4980A(d) of the Internal

Revenue Code of 1986, as amended, are to be effective as to excise tax imposed by reason of a decedent's death occurring after the effective date of this act.

(2) The amendments made in this act regarding apportionment of the tax with respect to qualified real property, and regarding extensions to pay tax, shall be effective with respect to the tax attributable to deaths occurring after the effective date of this act.

(3) The amendment to RCW 11.98.070(13) shall be effective with respect to loans described in RCW 83.110.020(2) made or committed to be made after the effective date of this act.

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 shall take effect immediately.

Passed the House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 41

[Substitute House Bill No. 1259]

GUIDE AND SERVICE DOGS—EXEMPTION FROM LOCAL LICENSE FEES

AN ACT Relating to license fees for guide and service dogs; and adding a new section to chapter 70.84 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 70.84 RCW to read as follows:

A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her guide dog, or a request by a physically disabled person not to be charged a fee to license his or her service dog.

Passed the House March 2, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 42

[Substitute Senate Bill No. 5297]

OPEN PUBLIC MEETINGS—VOTING BY SECRET BALLOT PROHIBITED

AN ACT Relating to the use of secret ballots at meetings required to be open to the public; and amending RCW 42.30.060.

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

Sec. 1. Section 6, chapter 250, Laws of 1971 ex. sess. and RCW 42.30.060 are each amended to read as follows:

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this ~~(section)~~ subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

Passed the Senate March 6, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 43

[Substitute Senate Bill No. 5208]

CONDOMINIUM ACT

AN ACT Relating to condominiums; reenacting and amending RCW 58.17.040; adding a new chapter to Title 64 RCW; creating a new section; and providing an effective date.

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

ARTICLE I

GENERAL PROVISIONS

NEW SECTION. Sec. 1-101. This chapter shall be known and may be cited as the Washington condominium act or the condominium act.

NEW SECTION. Sec. 1-102. APPLICABILITY. (1) This chapter applies to all condominiums created within this state after the effective date of this act. Sections 1-105 (separate titles and taxation), 1-106 (applicability of local ordinances, regulations, and building codes), 1-107 (condemnation), 2-103 (construction and validity of declaration and bylaws), 2-104 (description of units), 3-102(1)(a) through (f) and (k) through (q) (powers

of unit owners' association), 3-112 (tort and contract liability), 3-117 (lien for assessments), 3-119 (association records), 4-107 (resales of units), 4-115 (effect of violation on rights of action; attorney's fees), and 1-103 (definitions) of this act to the extent necessary in construing any of those sections, apply to all condominiums created in this state before the effective date of this act; but those sections apply only with respect to events and circumstances occurring after the effective date of this act and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after the effective date of this act and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before the effective date of this act if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) Sections 4-101 (applicability—waiver), 4-102 (liability for public offering statement requirements), 4-103 (public offering statement—general provisions), 4-104 (public offering statement—condominiums containing conversion buildings), 4-105 (public offering statement—condominium securities), 4-106 (purchaser's right to cancel), 4-108 (escrow of deposits), and 4-115 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after the effective date of this act in condominiums created before the effective date in which the declarant or an affiliate of the declarant owns at least ten units constituting at least twenty percent of the units in the condominium.

NEW SECTION. Sec. 1-103. **DEFINITIONS.** In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (a) Is a general partner, officer, director, or employer of the declarant; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; (c) controls in any manner the election of a majority of the directors of the declarant; or (d)

has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under section 3-101 of this act.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 2-107 of this act.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who owns either six or more units in a condominium or fifty percent or more of the units in a condominium which have not previously been disposed of to any person other than a declarant or a dealer.

(13) "Declarant" means any person or group of persons acting in concert who (a) executes as declarant a declaration as defined in subsection (15) of this section, or (b) reserves or succeeds to any special declarant right under the declaration.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors pursuant to section 3-103 (4) or (5) of this act.

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by section 2-105 of this act and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; or (d) withdraw real property from a condominium.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 2-102 (2) or (4) of this act for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in section 2-120 of this act, whether or not it is also an association described in section 3-101 of this act.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under section 2-109 of this act; (b) exercise any development right under section 2-110 of this act; (c) maintain sales offices, management offices, signs advertising the condominium, and models under section 2-115 of this act; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under section 2-116 of this act; (e) make the condominium part of a larger condominium or a development under section 2-120 of this act; (f) make the condominium subject to a master association under section 2-120 of this act; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors during any period of declarant control under section 3-103(3) of this act.

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 2-105(1) (d) of this act. "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who

has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

NEW SECTION. Sec. 1-104. VARIATION BY AGREEMENT. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration.

NEW SECTION. Sec. 1-105. SEPARATE TITLES AND TAXATION. (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) Any development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law.

NEW SECTION. Sec. 1-106. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to section 2-118(2) of this act by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner.

NEW SECTION. Sec. 1-107. CONDEMNATION. (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's

allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf.

NEW SECTION. Sec. 1-108. **SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.** The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

NEW SECTION. Sec. 1-109. **CONSTRUCTION AGAINST IMPLICIT REPEAL.** This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

NEW SECTION. Sec. 1-110. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. Sec. 1-111. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT. (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

NEW SECTION. Sec. 1-112. OBLIGATION OF GOOD FAITH. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

NEW SECTION. Sec. 1-113. REMEDIES TO BE LIBERALLY ADMINISTERED. (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

ARTICLE 2
CREATION, ALTERATION, AND TERMINATION OF
CONDOMINIUMS

NEW SECTION. Sec. 2-101. CREATION OF CONDOMINIUM.

(1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to section 2-109 of this act. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless all units thereby created are substantially completed in accordance with the plans required to be recorded by section 2-109 of this act, as evidenced by a recorded certificate of completion executed by a licensed surveyor.

NEW SECTION. Sec. 2-102. UNIT BOUNDARIES. Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

NEW SECTION. Sec. 2-103. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to section 3-102(1)(a) of this act.

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter.

NEW SECTION. Sec. 2-104. DESCRIPTION OF UNITS. A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

NEW SECTION. Sec. 2-105. CONTENTS OF DECLARATION.

(1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and reserves the right to create;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in section 2-102(1) of this act;

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces;

(v) The level or levels on which each unit is located; and

(vi) The type of heat and heat service;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in section 2-102 (2) and (4) and section 2-108 (2) and (3) of this act, as provided in section 2-109(2)(j) of this act;

(i) A description of any real property, except real property subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in section 2-102 (2) and (4) and section 2-108 (2) and (3) of this act, together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under section 1-103(29) of this act reserved by the declarant, together with a legal description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in section 2-107 of this act;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by sections 2-106 through 2-109, 2-115, 2-116, 2-120, and 3-103(4) of this act.

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by section 2-105(1) of this act with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate.

NEW SECTION. Sec. 2-106. LEASEHOLD CONDOMINIUMS.

(1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

- (b) The date on which the lease is scheduled to expire;
- (c) A legal description of the real property subject to the lease;
- (d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;
- (e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and
- (f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 1-107(1) of this act as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association.

NEW SECTION. Sec. 2-107. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES. (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class

voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

NEW SECTION. Sec. 2-108. LIMITED COMMON ELEMENTS.

(1) Except for the limited common elements described in section 2-102(2) and (4) of this act, the declaration shall specify to which unit or units each limited common element is allocated.

(2) A limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, sixty-seven percent of the unit owners, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans.

NEW SECTION. Sec. 2-109. SURVEY MAPS AND PLANS. (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by

the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled to identify the rights applicable to each parcel;

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement pursuant to section 4-103(1)(i) of this act and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in section 2-102(2) and (4) of this act;

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under section 2-110(3) of this act, identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

NEW SECTION. Sec. 2-110. EXERCISE OF DEVELOPMENT RIGHTS. (1) To exercise any development right reserved under section 2-105(1)(j) of this act, the declarant shall prepare, execute, and record an amendment to the declaration under section 2-117 of this act, and comply with section 2-109 of this act. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 2-108 of this act.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by section 2-105 or 2-106 of this act, as the case may be, and the survey map and plans include all matters required by section 2-109 of this act. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 2-105(1)(j) of this act.

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under section 1-107 of this act.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 2-105(1) (j) of this act, that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant.

NEW SECTION. Sec. 2-111. ALTERATIONS OF UNITS. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof.

NEW SECTION. Sec. 2-112. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining

units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of section 2-109(4) of this act necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

NEW SECTION. Sec. 2-113. SUBDIVISION OF UNITS. (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit.

NEW SECTION. Sec. 2-114. MONUMENTS AS BOUNDARIES. The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans.

NEW SECTION. Sec. 2-115. USE BY DECLARANT. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the

common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances.

NEW SECTION. Sec. 2-116. **EASEMENT RIGHTS.** Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

NEW SECTION. Sec. 2-117. **AMENDMENT OF DECLARATION.** (1) Except in cases of amendments that may be executed by a declarant under section 2-109(6) or 2-110 of this act; the association under section 1-107, 2-106(5), 2-108(3), 2-112(1), 2-113, or 2-118(8) of this act; or certain unit owners under section 2-108(2), 2-112(1), 2-113(2), or 2-118(2) of this act, and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: **PROVIDED,** That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the

special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

NEW SECTION. Sec. 2-118. **TERMINATION OF CONDOMINIUM.** (1) Except in the case of a taking of all the units by condemnation under section 1-107 of this act, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: **PROVIDED,** That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs.

NEW SECTION. Sec. 2-119. RIGHTS OF SECURED LENDERS. The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 3-114 of this act. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest.

NEW SECTION. Sec. 2-120. MASTER ASSOCIATIONS. (1) If the declaration provides that any of the powers described in section 3-102 of this act are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in section 3-101 of this act, it may exercise the powers set forth in section 3-102(1)(b) of this act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members

of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 3-103, 3-109, 3-110, 3-111, and 3-113 of this act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of section 3-103(6) of this act with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 3-101 of this act, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors.

NEW SECTION. Sec. 2-121. **MERGER OR CONSOLIDATION OF CONDOMINIUMS.** (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the re-allocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter.

ARTICLE 3 MANAGEMENT OF CONDOMINIUM

NEW SECTION. Sec 3-101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under section 2-118 of this act or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23A RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.

NEW SECTION. Sec. 3-102. POWERS OF UNIT OWNERS' ASSOCIATION. (1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to section 3-113 of this act;

(i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 2-102(2) and (4) of this act, and for services provided to unit owners;

(k) Impose and collect charges for late payment of assessments pursuant to section 3-117(10) of this act and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by section 4-109 of this act, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

NEW SECTION, Sec. 3-103. BOARD OF DIRECTORS AND OFFICERS. (1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required

to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to section 2-117 of this act, to terminate the condominium pursuant to section 2-118 of this act, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (a) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (b) two years after the last conveyance or transfer of record of a unit except as security for a debt; (c) two years after any development right to add new units was last exercised; or (d) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (a), (b), and (c) of this subsection, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at

least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners.

NEW SECTION. Sec. 3-104. TRANSFER OF ASSOCIATION CONTROL. (1) Within sixty days after the termination of the period of declarant control provided in section 3-103(4) of this act or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(r) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts,

and related records to determine if the declarant was charged for and paid the proper amount of assessments.

NEW SECTION. Sec. 3-105. TRANSFER OF SPECIAL DECLARANT RIGHTS. (1) No special declarant right, as described in section 1-103(29) of this act, created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in section 1-103(1) of this act, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to section 2-115 of this act and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in section 3-103(d) of this act terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in section 2-115 of this act, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of section 3-103(4) of this act for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to

any liability or obligation as a declarant other than liability for the successor's acts and omissions under section 3-103(4) of this act;

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

NEW SECTION. Sec. 3-106. **TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.** If entered into before the board of directors elected by the unit owners pursuant to section 3-103(6) of this act takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to section 3-103(6) of this act takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

NEW SECTION. Sec. 3-107. **BYLAWS.** (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(e) The method of amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) If the declaration or bylaws provide that any officers or directors of the association must be unit owners, then notwithstanding the provision of section 1-103(32) of this act, the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he

or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

NEW SECTION. Sec. 3-108. UPKEEP OF CONDOMINIUM. (1) Except to the extent provided by the declaration, subsection (2) of this section, or section 3-114(7) of this act, the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant.

NEW SECTION. Sec. 3-109. MEETINGS. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer.

NEW SECTION. Sec. 3-110. QUORUMS. (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the

votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting.

NEW SECTION. Sec. 3-111. VOTING—PROXIES. (1) If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 3-109 of this act, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded.

NEW SECTION. Sec. 3-112. TORT AND CONTRACT LIABILITY. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred

during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 3-118 of this act.

NEW SECTION. Sec. 3-113. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all

powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances.

NEW SECTION. Sec. 3-114. **INSURANCE.** (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify, cancel, or refuse to renew it until thirty days after notice of the proposed modification, cancellation, or nonrenewal has been mailed to the association, each unit owner, and each holder of a mortgage to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The insurer shall not modify the amount or the extent of the coverage by the policy, or cancel or refuse to renew the policy, without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the

units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(1) of this act, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 2-118 of this act governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use.

NEW SECTION. Sec. 3-115. SURPLUS FUNDS. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

NEW SECTION. Sec. 3-116. ASSESSMENTS FOR COMMON EXPENSES. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 2-107(1) of this act. Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to section 3-117 of this act.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to section 3-118(1) of this act may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

NEW SECTION. Sec. 3-117. LIEN FOR ASSESSMENTS. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due. Unless the declaration provides otherwise, fees, late charges, fines, and interest charged pursuant to section 3-102(1) (j), (k), and (l) of this act are enforceable as assessments under this section. If an assessment is payable in installments, the association has a lien for the full amount of the assessment from the time the first installment thereof is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. If the association elects to foreclose its lien under this section judicially pursuant to chapter 61.12 RCW rather than nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (6) of this section, the lien shall also be prior to the mortgages described in (b) of this subsection to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to section 3-116(1) of this act which would have become due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien: PROVIDED, That the priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a first mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent its foreclosure includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(6) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW or nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration so provides and contains the prerequisites therefor set forth in such chapter. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(7) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(8) Except as provided in subsection (2) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments that became

due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(9) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(10) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(11) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(12) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(13) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law.

NEW SECTION. Sec. 3-118. **OTHER LIENS AFFECTING THE CONDOMINIUM.** (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64-.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-113 of this act, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units.

NEW SECTION. Sec. 3-119. ASSOCIATION RECORDS. (1) The association shall keep financial records sufficiently detailed to enable the association to comply with section 4-107 of this act. All financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. The financial records of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association.

NEW SECTION. Sec. 3-120. ASSOCIATION AS TRUSTEE. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to

assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

ARTICLE 4
PROTECTION OF CONDOMINIUM PURCHASERS

NEW SECTION. Sec. 4-101. **APPLICABILITY—WAIVER.** (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units which are not restricted to residential use in the declaration.

(2) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition to a dealer who intends to offer those units to purchasers; or
- (f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

NEW SECTION. Sec. 4-102. **LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.** (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of sections 4-103 and 4-104 of this act.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to section 3-105 of this act or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in section 4-106(1) of this act. Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of sections 4-103 and 4-104 of this act as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

NEW SECTION. Sec. 4-103. PUBLIC OFFERING STATEMENT—GENERAL PROVISIONS. (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (i) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (j) A list of the limited common elements assigned to the units being offered for sale;
- (k) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (l) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;
- (m) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (n) The estimated current common expense liability for the units being offered;
- (o) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(p) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(q) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(r) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(s) If the condominium involves a conversion building, the information required by section 4-104 of this act;

(t) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(u) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(v) The identification of any model units and a description of the material differences between the model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(w) Any liens on real property to be conveyed to the association required to be disclosed pursuant to section 4-109(2)(b) of this act;

(x) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(y) A brief description of any construction warranties to be provided to the purchaser;

(z) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(aa) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(bb) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(cc) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(dd) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under section 4-106 of this act, including applicable time frames and procedures;

(ee) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(ff) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(gg) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel; and

(hh) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1) (g), (j), (r), (t), (u), and (bb) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1) (dd), (ff), and (gg) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section.

NEW SECTION. Sec. 4-104. PUBLIC OFFERING STATEMENT—CONDOMINIUMS CONTAINING CONVERSION BUILDINGS. (1) The public offering statement of a condominium containing any conversion building shall contain, in addition to the information required by section 4-103 of this act:

(a) A statement by the declarant, based on a report prepared by an independent, licensed architect or engineer, describing, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to buildings containing units that may be occupied for residential use.

***NEW SECTION. Sec. 4-105. PUBLIC OFFERING STATEMENT—CONDOMINIUM SECURITIES.** *If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the securities and exchange commission. An interest in a condominium is not a security under the provisions of chapter 21.20 RCW. A declarant satisfies the requirements of this chapter relating to a public offering statement by delivering to the purchaser a copy of the public offering statement filed pursuant to the securities act of Washington, chapter 21.20 RCW, the land development act of 1973, chapter 58.19 RCW, the timeshare act, chapter 64.36 RCW, or the state law relating to camping resorts, chapter 19.105 RCW.*

**Sec. 4-105 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 4-106. PURCHASER'S RIGHT TO CANCEL. (1) A person required to deliver a public offering statement pursuant to section 4-102(3) of this act shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to section 4-102(3) of this act fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase.

NEW SECTION. Sec. 4-107. RESALES OF UNITS. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under section 4-101(2) of this act, a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association, and a certificate, based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing the effect on the proposed conveyance of any right of first refusal or other restraint on the free alienability of the unit;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement, which shall be current to within forty-five days, of any common expenses and special assessments past due over thirty days;

(c) A statement of any other fees payable by unit owners;

(d) A statement of any anticipated capital expenditures in excess of five percent of the annual budget of the association that have been approved by the board of directors;

(e) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves currently designated by the association for any specified projects;

(f) A balance sheet of the association, which shall be current to within one hundred twenty days, and an income and expense statement of the association, if an income and expense statement has been prepared;

- (g) The current operating budget of the association;
- (h) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
- (i) A statement describing any insurance coverage provided for the benefit of unit owners;
- (j) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;
- (k) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;
- (l) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and
- (m) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(2) The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (1) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

NEW SECTION. Sec. 4-108. ESCROW OF DEPOSITS. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 4-102(3) of this act shall be placed in escrow and held either in this state or in the state where the unit is located in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action.

NEW SECTION. Sec. 4-109. RELEASE OF LIENS. (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts.

NEW SECTION. Sec. 4-110. CONVERSION BUILDINGS. (1) A declarant of a condominium containing conversion buildings, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

***NEW SECTION. Sec. 4-111. EXPRESS WARRANTIES OF QUALITY. (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:**

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to section 4-103(1)(u) of this act;

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

*Sec. 4-111 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4-112. IMPLIED WARRANTIES OF QUALITY. (1) A declarant and any dealer warrants that a unit will be in

at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the person, or made by any person before the creation of the condominium, will be:

(a) Free from defective materials; and

(b) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in section 4-113 of this act.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in section 1-103(1) of this act, are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

NEW SECTION. Sec. 4-113. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY. (1) Except as limited by subsection (2) of this section, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

***NEW SECTION. Sec. 4-114. STATUTE OF LIMITATIONS FOR WARRANTIES.** (1) *A judicial proceeding for breach of any obligation arising under section 4-111 or 4-112 of this act must be commenced within four years after the cause of action accrues.*

(2) *Subject to subsection (3) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:*

(a) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the time the common element is completed or, if later: (i) As to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

*Sec. 4-114 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4-115. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION—ATTORNEY'S FEES. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party.

NEW SECTION. Sec. 4-116. LABELLING OF PROMOTIONAL MATERIAL. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT."

NEW SECTION. Sec. 4-117. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE. (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to section 2-109 of this act.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by sections 2-110, 2-111, 2-112, 2-113, 2-115, and 2-116 of this act.

***NEW SECTION. Sec. 4-118. SUBSTANTIAL COMPLETION OF UNITS.** *In the case of a sale of a unit where delivery of a public offering*

statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded.

*Sec. 4-118 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4-119. SECTION CAPTIONS. Section captions as used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 4-120. 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. 4-121. A statutory committee is created to:**

(1) Review the Washington condominium act, and consider comments concerning the act;

(2) Draft recommended revisions to the act; and

(3) Prepare written comments on the act to be included in the Senate or House Journals. The committee shall consist of the following member-:

(a) One member each of the majority and minority parties of the senate, appointed by the president of the senate;

(b) One member each of the majority and minority parties of the house of representatives, appointed by the speaker of the house of representatives;

(c) Four members of the drafting subcommittee of the senate judiciary condominium task force;

(d) One member appointed by the Washington land title association;

(e) One member appointed by the Washington mortgage bankers association;

(f) One member appointed by the Washington association of realtors;

(g) One member appointed by the Washington chapter of the community associations institute;

(h) One member appointed by the homebuilders association of Washington state;

(i) One member appointed by the Washington state bar association; and

(j) One member appointed by the Washington association of county officials.

The committee shall report to the senate law and justice committee and the house judiciary committee before March 1, 1990.

This section shall expire March 1, 1990.

*Sec. 4-121 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4-122. LEGISLATIVE DIRECTIVE. Sections 1-101 through 4-120 of this act shall constitute a new chapter in Title 64 RCW.

Sec. 4-123. Section 2, chapter 121, Laws of 1983 as amended by section 1, chapter 108, Laws of 1987 and by section 1, chapter 354, Laws of 1987 and RCW 58.17.040 are each reenacted and amended to read as follows:

The provisions of this chapter shall not apply to:

(1) Cemeteries and other burial plots while used for that purpose;
 (2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(7) (~~A division which is made by subjecting a portion of a parcel or tract of land to chapter 64.32 RCW if a city, town, or county has approved a binding site plan for all of such land:~~) Divisions of land into lots or tracts if: (a) The improvements constructed or to be constructed thereon will be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (b) a city, town, or county has approved a binding site plan for all such land; and (c) the binding site plan contains thereon the following statement: "All development of the land described herein shall be in accordance with the binding site plan, as it may be amended. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest."

NEW SECTION. Sec. 4-124. **EFFECTIVE DATE.** This act shall take effect July 1, 1990.

Passed the Senate February 15, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 18, 1989.

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

"I am returning herewith, without my approval as to sections 4-105, 4-111, 4-114, 4-118, and 4-121, Substitute Senate Bill No. 5208 entitled:

"AN ACT Relating to Condominiums."

The Washington Condominium Act (WCA) sets forth in statute a single and comprehensive body of law governing the development, ownership and management of condominiums. In doing this, the interests of lenders, developers, builders, realtors and local governments have been adequately protected. The interests of purchasers have not fared as well.

For example, Substitute Senate Bill No. 5208 expands warranties of quality. However, section 4-111 is written in such a way that the "express" warranty of quality purports to give much more protection than it docs. This provision is substantially less protective than the uniform act already in law. One limitation in this section takes away a purchaser's right to rely on the promoter's reservation of development rights, even though it is made in the public offering statement. Therefore, I have vetoed this section.

Although I support increased flexibility and certainty for developers, these changes must be accompanied by requirements for full disclosure and protection for consumers. Condominium purchasers have a right to rely on information they receive and to know if new buildings or subdivisions may be developed, or if certain portions of the development may be withdrawn from the project. For this reason, I am not approving section 4-105, which exempts condominium promoters from important disclosure requirements.

Section 4-114 specifies the statute of limitations for warranties regarding condominium quality. Under this section, purchasers would receive less time to seek relief for breach of warranty than under existing law. This section allows warranties to expire within four years of the original purchase, regardless of whether the defect is apparent. Under current law, the statute of limitations runs for warranties three years after discovery of the defect, rather than from the date of the first purchase.

Section 4-118 of the Act removes the requirement that a unit be "substantially completed" before the conveyance is completed. This allows the seller to have use of the funds before the purchaser is able to use the property, detracting from the rights of individual purchasers.

Section 4-121 recreates the 1987 statutory committee, which presented the first draft to the legislature. I am vetoing this section because there is no apparent need for a group such as this, and consumer representation is clearly inadequate. The state has far too many boards, commissions and committees already and creation of yet another one for such a questionable purpose is unnecessary.

Substitute Senate Bill No. 5208 clarifies Washington State law on condominiums. Recent changes in lifestyle have increased the prevalence of this type of real estate transaction, thereby increasing the need for more certainty in the law regarding these transactions. However, it is not in the public's interest to use this bill as a vehicle to reduce important consumer protection rights granted through existing law. For this reason I have vetoed the above mentioned sections of Substitute Senate Bill No. 5208.

With the exception of sections 4-105, 4-111, 4-114, 4-118, and 4-121, Substitute Senate Bill No. 5208 is approved.*

CHAPTER 44

[Substitute Senate Bill No. 5807]

INDIAN AND HISTORIC GRAVES—PROTECTION

AN ACT Relating to archaeological objects and sites; the protection of Indian and historic graves; amending RCW 27.53.030 and 27.53.060; adding new sections to chapter 27.44 RCW; adding new sections to chapter 68.05 RCW; creating new sections; repealing RCW 27.44.010; and prescribing penalties.

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

NEW SECTION. Sec. 1. INTENT. The legislature hereby declares that:

(1) Native Indian burial grounds and historic graves are acknowledged to be a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Washington. The legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state;

(2) There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;

(3) There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;

(4) Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected and it is therefore the legislature's intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration.

NEW SECTION. Sec. 2. PROTECTION OF INDIAN GRAVES.

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe. The expenses of reinterment are to be paid by the office of archaeology and historic preservation pursuant to RCW 27.34.220.

(2) Any person who sells any native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave, is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves, or artifacts

that were removed from cairns or graves as may be authorized by RCW 27.53.060 or by other than human action; or

(b) Actions taken in the performance of official law enforcement duties.

(4) It shall be a complete defense in the prosecution under 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, glyptic, or painted records, or artifacts accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

NEW SECTION. Sec. 3. CIVIL ACTION BY INDIAN TRIBE OR MEMBER—TIME FOR COMMENCING ACTION—VENUE—DAMAGES—ATTORNEYS' FEES. (1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof, shall have a civil action to secure an injunction, damages, or other appropriate relief against any person who is alleged to have violated section 2 of this act. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the superior or tribal court of the county in which the grave, cairn, remains, or artifacts are located, or in the superior court of the county within which the defendant resides.

(2) Any conviction pursuant to section 2 of this act shall be prima facie evidence in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may award reasonable attorneys' fees to the plaintiff;

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as the court sees fit, including the reinternment of human remains;

(c) The plaintiff shall recover imputed damages of five hundred dollars or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(d) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the office of archaeology and historic preservation for the purposes of Indian historic preservation and to cover the cost of reinternment expenses by the office; and

(e) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) If the defendant prevails, the court may award reasonable attorneys' fees to the defendant.

NEW SECTION. Sec. 4. "HISTORIC GRAVE" DEFINED. "Historic grave" as used in this chapter means a grave or graves that were placed outside a cemetery dedicated pursuant to chapter 68.24 RCW, prior to passage of this section; except Indian graves and burial cairns protected under chapter 27.44 RCW.

NEW SECTION. Sec. 5. PROTECTION OF HISTORIC GRAVES. (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 cemetery board. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation.

(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. 6. Section 3, chapter 134, Laws of 1975 1st ex. sess. as last amended by section 2, chapter 124, Laws of 1988 and RCW 27.53.030 are each amended to read as follows:

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

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of community development.

~~((3))~~ (5) "Director" means the director of community development or the director's designee.

~~((4))~~ (6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington

State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

((5)) (7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

((6)) (8) "Professional archaeologist" means a person who has met the educational, training, and experience requirements of the society of professional archaeologists.

((7)) (9) "Qualified archaeologist" means a person who has had formal training and/or experience in archaeology over a period of at least three years, and has been certified in writing to be a qualified archaeologist by two professional archaeologists.

((8)) (10) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

((9)) (11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

Sec. 7. Section 6, chapter 134, Laws of 1975 1st ex. sess. as last amended by section 4, chapter 124, Laws of 1988 and RCW 27.53.060 are each amended to read as follows:

(1) On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, (~~including, but not limited to, American Indian or aboriginal camp site, dwelling site, rock shelter, cave dwelling site, storage site, grave, burial site, or skeletal remains and grave goods, cairn, or tool making site, or to remove from any such land, site, or area, grave, burial site, cave, rock shelter, or cairn, any skeletal remains, artifact or implement of stone, bone, wood, or any other material, including, but not limited to, projectile points, arrowheads, knives, awls, scrapers, beads or ornaments, basketry, matting, mauls, pestles, grinding stones, rock carvings or paintings, or any other artifacts or implements, or portions or fragments thereof~~) or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in

chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director for such activities ((on public property or written permission from the private landowner for such activities on private land. A private landowner may request the director to assume the duty of issuing such permits)).

(2) The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior to issuance of the permit. The ((public)) property ((landowner)) owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency. The director, in consultation with the ((Washington state archaeological research center)) affected tribes, shall develop guidelines for the issuance and processing of permits. Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted. The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites.

NEW SECTION. Sec. 8. Sections 1 through 3 of this act are each added to chapter 27.44 RCW.

NEW SECTION. Sec. 9. Sections 4 and 5 of this act are each added to chapter 68.05 RCW.

NEW SECTION. Sec. 10. Section captions used in this act do not constitute any part of the law.

NEW SECTION. Sec. 11. This act is to be liberally construed to achieve the legislature's intent.

NEW SECTION. Sec. 12. Section 1, chapter 216, Laws of 1941 and RCW 27.44.010 are each repealed.

Passed the Senate March 6, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 45

[Substitute Senate Bill No. 5263]

PUBLIC EMPLOYEES—ARBITRATION—ALLEGED VIOLATIONS OF UNILATERALLY IMPLEMENTED EMPLOYER PROPOSALS

AN ACT Relating to arbitration for unilaterally implemented proposals; and amending RCW 41.56.100.

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

Sec. 1. Section 10, chapter 108, Laws of 1967 ex. sess. as amended by section 21, chapter 296, Laws of 1975 1st ex. sess. and RCW 41.56.100 are each amended to read as follows:

A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative: **PROVIDED**, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. If a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract.

Passed the Senate March 3, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 46

[Senate Bill No. 5042]

PUBLIC EMPLOYEES—UNILATERAL IMPLEMENTATION OF COLLECTIVE BARGAINING AGREEMENTS

AN ACT Relating to unilateral implementation in public sector collective bargaining; 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) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to the following:

(a) Bargaining units covered by RCW 41.56.430 et seq. for factfinding and interest arbitration;

(b) Collective bargaining agreements authorized by chapter 53.18 RCW;

(c) Security forces established under RCW 43.52.520; or

(d) Collective bargaining agreements authorized by chapter 54.04 RCW.

(4) This section shall not apply to collective bargaining agreements in effect or being bargained at the time of the effective date of this section.

Passed the Senate February 10, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 47

[House Bill No. 1025]

COMMERCIAL FISHING LICENSES—REQUIREMENTS AND RESTRICTIONS

AN ACT Relating to commercial fishing licenses; amending RCW 75.28.020 and 75.28.095; and repealing RCW 75.28.081, 75.28.123, and 75.28.370.

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

Sec. 1. Section 75.28.020, chapter 12, Laws of 1955 as last amended by section 104, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.020 are each amended to read as follows:

(1) The department may only issue a commercial license to a person who is sixteen years of age or older (~~and who is a citizen~~) and a bona fide resident of the United States. The deckhand license required by RCW 75.28.690 may be issued to persons under sixteen years of age. The department may only issue a commercial license to a corporation if it is authorized to do business in this state. A valid Oregon license which is comparable to a license under this title is valid in the concurrent waters of the Columbia River if the state of Oregon recognizes as valid the comparable Washington license.

Sec. 2. Section 1, chapter 90, Laws of 1969 as last amended by section 1, chapter 9, Laws of 1988 and RCW 75.28.095 are each amended to read as follows:

(1) A charter boat license is required for a vessel to be operated as a charter boat from which food fish are taken for personal use. The annual license fees are:

Species	Resident Fee	Nonresident Fee
(a) Food fish other than salmon	\$100	\$200
(b) Salmon and other food fish	\$200	\$200

(2) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish, and which delivers food fish into state ports or delivers food fish taken from state waters into United States ports. "Charter boat" does not mean:

(a) Vessels not generally engaged in charter boat fishing which are under private lease or charter and operated by the lessee for the lessee's personal recreational enjoyment; or

(b) Vessels used by guides for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(3) A vessel shall not engage in both charter or sports fishing and commercial fishing on the same day. ~~((A vessel may be licensed for both charter boat fishing and for commercial fishing at the same time. The license or delivery permit allowing the activity not being engaged in shall be deposited with the fisheries patrol officer for that area or an agent designated by the director.))~~

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

(1) Section 14, chapter 283, Laws of 1971 ex. sess., section 2, chapter 40, Laws of 1975-'76 2nd ex. sess., section 111, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.081;

(2) Section 2, chapter 300, Laws of 1983 and RCW 75.28.123; and

(3) Section 75.28.370, chapter 12, Laws of 1955, section 2, chapter 66, Laws of 1979, section 134, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.370.

Passed the House February 3, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 48

[House Bill No. 1062]

CODE OF MILITARY JUSTICE—REVISED PROVISIONS

AN ACT Relating to the Washington code of military justice; amending RCW 38.38.004, 38.38.008, 38.38.012, 38.38.016, 38.38.020, 38.38.024, 38.38.064, 38.38.068, 38.38.072, 38.38.076, 38.38.080, 38.38.084, 38.38.088, 38.38.092, 38.38.132, 38.38.172, 38.38.176, 38.38.184, 38.38.188, 38.38.196, 38.38.200, 38.38.240, 38.38.244, 38.38.248, 38.38.252, 38.38.256, 38.38.260, 38.38.268, 38.38.308, 38.38.312, 38.38.316, 38.38.320, 38.38.324, 38.38.328, 38.38.368, 38.38.372, 38.38.376, 38.38.380, 38.38.384, 38.38.388, 38.38.392, 38.38.396, 38.38.400, 38.38.404, 38.38.408, 38.38.412, 38.38.420, 38.38.428, 38.38.432, 38.38.440, 38.38.484, 38.38.488, 38.38.492, 38.38.532, 38.38.540, 38.38.556, 38.38.564, 38.38.568, 38.38.572, 38.38.580, 38.38.652, 38.38.656, 38.38.660, 38.38.684, 38.38.688, 38.38.716, 38.38.720, 38.38.756, 38.38.772, 38.38.788, 38.38.800, 38.38.840, 38.38.844, 38.38.848, 38.38.852, 38.38.856, 38.38.860, 38.38.864, and 38.38.868; and prescribing penalties.

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

Sec. 1. Section 1, chapter 220, Laws of 1963 and RCW 38.38.004 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) (~~"State military forces"~~) "Organized militia" means the national guard of the state, as defined in section 101(3) of title 32, United States Code, (~~(the organized naval militia of the state;)~~) and any other military force organized under the laws of the state of Washington (~~(and shall be analogous to "organized militia" as defined in RCW 38.04.010).~~).

(2) "Officer" means commissioned or warrant officer.

(3) "Commissioned officer" includes a commissioned warrant officer.

(4) "Commanding officer" includes only commissioned officers in command of a unit.

(5) "Superior commissioned officer" means a commissioned officer superior in rank (~~(and)~~) or command.

(6) "Enlisted member" means a person in an enlisted grade.

(7) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) "Rank" means the order of precedence among members of the (~~(state military forces)~~) organized militia.

(9) (~~"Active state duty" means full-time duty in the active military service of the state under an order of the governor issued under authority vested in him by law, and includes travel to and from such duty;)~~) The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

~~((10))~~ ~~("Duty status other than active state duty" means and includes any periods of drill and such other training and service not requiring the entire time of the organization or person as may be required under state or federal laws, regulations or orders, and includes travel to and from such duty.~~

~~((11))~~ "Military court" means a court-martial(;) or a court of inquiry(, or a provost court).

~~((12))~~ ~~"Law officer" means an official)~~ (11) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.

~~((13))~~ ~~"Law specialist" means a commissioned officer of the organized naval militia of the state designated for special duty (law):~~

~~((14))~~ ~~"Legal officer" means any commissioned officer of the organized naval militia of the state designated to perform legal duties for a command:~~

~~((15))~~ (12) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the ~~((state military forces))~~ organized militia.

~~((16))~~ (13) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

~~((17))~~ (14) "Military" refers to any or all of the armed forces.

~~((18))~~ (15) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

~~((19))~~ (16) "May" is used in a permissive sense. The words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

~~((20))~~ (17) "Shall" is used in an imperative sense.

~~((21))~~ (18) "Code" means this chapter.

(19) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period.

Sec. 2. Section 2, chapter 220, Laws of 1963 and RCW 38.38.008 are each amended to read as follows:

This code applies to all members of the ~~((state military forces))~~ organized militia who are not in federal service.

Sec. 3. Section 3, chapter 220, Laws of 1963 and RCW 38.38.012 are each amended to read as follows:

~~((2))~~ No person who has deserted from the ~~((state military forces))~~ organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

Sec. 4. Section 4, chapter 220, Laws of 1963 and RCW 38.38.016 are each amended to read as follows:

(1) If any commissioned officer, dismissed by order of the governor, makes a written application for trial by court-martial, setting forth, under oath, that he or she has been wrongfully dismissed, the governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which ~~((he))~~ the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and ~~((he))~~ the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which ~~((he))~~ the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(2) If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this code, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(3) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had ~~((he))~~ the officer not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the governor, ~~((he))~~ the officer has no right to trial under this section.

Sec. 5. Section 5, chapter 220, Laws of 1963 and RCW 38.38.020 are each amended to read as follows:

(1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the ~~((state military forces))~~ organized militia while those units are

serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Sec. 6. Section 6, chapter 220, Laws of 1963 and RCW 38.38.024 are each amended to read as follows:

(1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the ~~((state military forces))~~ organized militia as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the ~~((state military forces))~~ organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or ~~((his))~~ assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates ~~((or legal officer))~~ in matters relating to the administration of military justice; and the staff judge advocate ~~((or legal officer))~~ of any command is entitled to communicate directly with the staff judge advocate ~~((or legal officer))~~ of a superior or subordinate command, or with the state judge advocate.

(5) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate ~~((or legal officer))~~ to any reviewing authority upon the same case.

Sec. 7. Section 7, chapter 220, Laws of 1963 and RCW 38.38.064 are each amended to read as follows:

(1) Apprehension is the taking of a person into custody.

(2) Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers, ~~((petty officers))~~ and non-commissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

Sec. 8. Section 8, chapter 220, Laws of 1963 and RCW 38.38.068 are each amended to read as follows:

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state of Washington (~~((military forces))~~) organized militia and deliver ~~((him))~~ the offender into the custody of the state of Washington (~~((military forces))~~) organized militia. If an offender is apprehended outside of the state of Washington, ~~((his))~~ the return to the area must be in accordance with normal extradition procedures or reciprocal agreement.

Sec. 9. Section 9, chapter 220, Laws of 1963 and RCW 38.38.072 are each amended to read as follows:

(1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing ~~((him))~~ the person to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers(~~(, petty officers,)~~) or noncommissioned officers to order enlisted members of ~~((his))~~ the officer's command or subject to ~~((his))~~ the officer's authority into arrest or confinement.

(3) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority ~~((he))~~ the officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(4) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Sec. 10. Section 10, chapter 220, Laws of 1963 and RCW 38.38.076 are each amended to read as follows:

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform ~~((him))~~ the person of the specific wrong of which he or she is accused and to try ~~((him))~~ the person or to dismiss the charges and release ~~((him))~~ the person.

Sec. 11. Section 11, chapter 220, Laws of 1963 and RCW 38.38.080 are each amended to read as follows:

Persons confined other than in a guard house, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or by such person as ~~((he))~~ the governor may authorize to act.

Sec. 12. Section 12, chapter 220, Laws of 1963 and RCW 38.38.084 are each amended to read as follows:

(1) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under RCW 38.38.080, may refuse to receive or keep any prisoner committed to his or her charge, when the committing person furnishes a statement, signed by ~~((him))~~ the committing person, of the offense charged against the prisoner.

(2) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under RCW 38.38.080, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against ~~((him))~~ the prisoner, and the name of the person who ordered or authorized the commitment.

Sec. 13. Section 13, chapter 220, Laws of 1963 and RCW 38.38.088 are each amended to read as follows:

Subject to RCW 38.38.488, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against ~~((him))~~ the person, nor shall the arrest or confinement imposed upon ~~((him))~~ the person be any more rigorous than the circumstances require to insure his or her presence, but ~~((he))~~ the person may be subjected to minor punishment during that period for infractions of discipline.

Sec. 14. Section 14, chapter 220, Laws of 1963 and RCW 38.38.092 are each amended to read as follows:

(1) Under such regulations as may be prescribed under this code a person subject to this code who is on active state service or inactive duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for ~~((his))~~ the offense shall, upon the request of competent military authority, be returned to military custody for the completion of ~~((his))~~ the sentence.

Sec. 15. Section 15, chapter 220, Laws of 1963 and RCW 38.38.132 are each amended to read as follows:

~~((1) Under such regulations as the governor may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court martial:~~

~~(a) Upon officer of his command:~~

~~(i) Withholding of privileges for not more than two consecutive weeks;~~

~~(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or~~

~~(iii) If imposed by the governor, the commanding officer of a force of the state military forces, or the commanding general of a division, a fine or forfeiture of pay and allowances of not more than seventy-five dollars;~~

~~(b) Upon other military personnel of his command:~~

~~(i) Withholding of privileges for not more than two consecutive weeks;~~

~~(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;~~

~~(iii) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included;~~

~~(iv) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;~~

~~(v) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or~~

~~(vi) If imposed by an officer exercising special court martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than ten dollars.~~

~~(2) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.~~

~~(3) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the governor may by regulation specifically prescribe, as provided in subsections (1) and (2) of this section.~~

~~(4) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected.~~

~~(5) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.~~

~~(6) Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to any pay and allowances accrued before that date:)~~

(1) Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the organized militia under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the governor, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate powers under this section to a principal assistant.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive duty or drill days;

(ii) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(A) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive drill or duty days;

(C) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month;

(b) Upon other personnel of his or her command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties for not more than fourteen duty or drill days, which need not be consecutive, and for not more than two hours per day, holidays included;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(vi) Detention of not more than fourteen days' pay;

(vii) If imposed by an officer of the grade of major or above:

(A) The punishment authorized in subsection (2)(b)(i) of this section;

(B) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(C) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(D) Extra duties, including fatigue or other duties, for not more than fourteen drill or duty days, which need not be consecutive, and for not more than two hours per day, holidays included;

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(F) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount imposable for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge such of the punishment authorized under subsection (2)(b) of this section as the governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition,

the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the mitigated punishment shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(a) Forfeiture of more than seven days' pay;

(b) Reduction of one or more pay grades from the fourth or a higher pay grade;

(c) Extra duties for more than ten days;

(d) Restriction for more than ten days; or

(e) Detention of more than fourteen days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

Sec. 16. Section 16, chapter 220, Laws of 1963 and RCW 38.38.172 are each amended to read as follows:

(1) In the ((state military forces)) organized militia not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a ~~((law officer))~~ military judge and not less than five members, or only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of not less than three members, or a military judge and not less than three members, or only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in (a) of this subsection so requests; and

(c) Summary courts-martial, consisting of one commissioned officer.

Sec. 17. Section 17, chapter 220, Laws of 1963 and RCW 38.38.176 are each amended to read as follows:

Each force of the ~~((state military forces))~~ organized militia has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor.

Sec. 18. Section 19, chapter 220, Laws of 1963 and RCW 38.38.184 are each amended to read as follows:

Subject to RCW 38.38.176, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense. A dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under RCW 38.38.260 was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

Sec. 19. Section 20, chapter 220, Laws of 1963 and RCW 38.38.188 are each amended to read as follows:

(1) Subject to RCW 38.38.176, summary courts-martial have jurisdiction to try persons subject to this code, except officers for any offense made punishable by this code.

(2) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if ~~((he))~~ the person objects thereto, unless under RCW 38.38.132 ~~((he))~~ the person has been permitted and has elected to refuse punishment under that section.

If objection to trial by summary court-martial is made by an accused who has been permitted to refuse punishment under RCW 38.38.132, trial shall be ordered by special or general court-martial, as may be appropriate.

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks.

Sec. 20. Section 22, chapter 220, Laws of 1963 and RCW 38.38.196 are each amended to read as follows:

A dishonorable discharge(~~(-bad conduct discharge)~~) or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

Sec. 21. Section 23, chapter 220, Laws of 1963 and RCW 38.38.200 are each amended to read as follows:

In the (~~(state military forces)~~) organized militia not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

Sec. 22. Section 24, chapter 220, Laws of 1963 and RCW 38.38.240 are each amended to read as follows:

In the (~~(state military forces)~~) organized militia not in federal service, general courts-martial may be convened by the president or by the governor, or by the commanding general of the national guard of the District of Columbia.

Sec. 23. Section 25, chapter 220, Laws of 1963 and RCW 38.38.244 are each amended to read as follows:

(1) In the (~~(state military forces)~~) organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(2) A special court-martial may not try a commissioned officer.

Sec. 24. Section 26, chapter 220, Laws of 1963 and RCW 38.38.248 are each amended to read as follows:

(1) In the (~~(state military forces)~~) organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment (~~(he)~~) the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all

summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable (~~by him~~).

Sec. 25. Section 27, chapter 220, Laws of 1963 and RCW 38.38.252 are each amended to read as follows:

(1) Any commissioned officer of or on duty with the (~~state military forces~~) organized militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any warrant officer of or on duty with the (~~state military forces~~) organized militia is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(3) (a) Any enlisted member of the (~~state military forces~~) organized militia who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but (~~he~~) shall serve as a member of a court only if, before the (~~convening of the court~~) conclusion of a session called by the military judge under RCW 38.38.380(1) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word "unit" means any regularly organized body of the (~~state military forces~~) organized militia not larger than a company, a squadron, (~~a division of the naval militia;~~) or a body corresponding to one of them.

(4) (a) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to (~~him~~) the person in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when (~~he~~) the member is the accuser or a witness for the prosecution or has acted as investigating

~~officer or as counsel in the same case. ((If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade, the convening authority shall appoint him as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction:))~~

(c) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the governor may prescribe, the convening authority may delegate his or her authority under this subsection to the staff judge advocate or to any other principal assistant.

Sec. 26. Section 28, chapter 220, Laws of 1963 and RCW 38.38.256 are each amended to read as follows:

~~((1) The authority convening a general court martial shall detail as law officer thereof a commissioned officer who is a member of the bar of the highest court of the state, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the state judge advocate. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case:~~

~~(2) The law officer may not consult with the members of the court, other than on the form of the findings as provided in RCW 38.38.380, except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court:))~~

(1) A military judge shall be detailed to each general court-martial. Subject to regulations of the governor, a military judge may be detailed to any special court-martial. The governor shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he or she has been detailed.

(2) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of the highest court of a state and who is certified to be qualified for duty as a military judge by the state judge advocate.

(3) The military judge of a general court-martial shall be designated by the state judge advocate or a designee for detail in accordance with regulations prescribed under subsection (1) of this section. Unless the court-martial was convened by the governor, neither the convening authority nor any member of the staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general

court-martial may perform such duties only when he or she is assigned and directly responsible to the state judge advocate or designee, and may perform duties of a judicial or nonjudicial nature other than those relating to the primary duty as a military judge of a general court-martial when such duties are assigned by or with the approval of the state judge advocate or designee.

(4) No person is eligible to act as military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote with the members of the court.

Sec. 27. Section 29, chapter 220, Laws of 1963 and RCW 38.38.260 are each amended to read as follows:

~~((1) For each general and special court martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.~~

~~(2) Trial counsel or defense counsel detailed for a general court martial:~~

~~(a) Must be a person who is a member of the bar of the highest court of the state, or a member of the bar of a federal court, and~~

~~(b) Must be certified as competent to perform such duties by the state judge advocate.~~

~~(3) In the case of a special court martial:~~

~~(a) If the trial counsel is qualified to act as counsel before a general court martial, the defense counsel detailed by the convening authority must be a person similarly qualified, and~~

~~(b) If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must be one of the foregoing.)~~

(1) (a) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The governor shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(b) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial:

(a) Must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a state, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under RCW 38.38.260(2) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(c) If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Sec. 28. Section 31, chapter 220, Laws of 1963 and RCW 38.38.268 are each amended to read as follows:

~~((1) No member of a general or special court martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause:~~

~~(2) Whenever a general court martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel:~~

~~(3) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.)~~

(1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of RCW 38.38.172 (2) (a) or (b), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

Sec. 29. Section 32, chapter 220, Laws of 1963 and RCW 38.38.308 are each amended to read as follows:

(1) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him or her as soon as practicable.

Sec. 30. Section 33, chapter 220, Laws of 1963 and RCW 38.38.312 are each amended to read as follows:

(1) No person subject to this code may compel ~~((any))~~ persons to incriminate ~~((himself))~~ themselves or to answer any question the answer to which may tend to incriminate ~~((him))~~ them.

(2) No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing ~~((him))~~ the person of the nature of the accusation and advising ~~((him))~~ that ~~((he))~~ the person does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by ~~((him))~~ the person may be used as evidence against him or her in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade ~~((him))~~ the person.

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against ~~((him))~~ the person in a trial by court-martial.

Sec. 31. Section 34, chapter 220, Laws of 1963 and RCW 38.38.316 are each amended to read as follows:

(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of ~~((his))~~ the right to be represented at that investigation by counsel. ~~((Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court martial jurisdiction over the command.))~~ The accused has a right to be represented at that investigation as provided in RCW 38.38.376 and in regulations prescribed under that section.

At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to

present anything (~~(he)~~) the person may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) hereof, no further investigation of that charge is necessary under this section unless it is demanded by the accused after (~~(he is)~~) being informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

Sec. 32. Section 35, chapter 220, Laws of 1963 and RCW 38.38.320 are each amended to read as follows:

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the governor. If that is not practicable, (~~(he)~~) the officer shall report in writing to the governor the reasons for delay.

Sec. 33. Section 36, chapter 220, Laws of 1963 and RCW 38.38.324 are each amended to read as follows:

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code (~~(and)~~), is warranted by evidence indicated in the report of the investigation under RCW 38.38.316, if there is such a report, and the court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the staff judge advocate under subsection (1) of this section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(a) Expressing conclusions with respect to each matter set forth in subsection (1) of this section; and

(b) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the state judge advocate shall accompany the specification.

~~((2))~~ (3) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

Sec. 34. Section 37, chapter 220, Laws of 1963 and RCW 38.38.328 are each amended to read as follows:

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial ~~((before))~~ or be required to participate by himself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her.

Sec. 35. Section 38, chapter 220, Laws of 1963 and RCW 38.38.368 are each amended to read as follows:

The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations, which shall, so far as ~~((he))~~ the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code.

Sec. 36. Section 39, chapter 220, Laws of 1963 and RCW 38.38.372 are each amended to read as follows:

(1) No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, ~~((law officer))~~ military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his or her functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to ~~((his))~~ judicial acts. The foregoing provisions of this section shall not apply with respect to (a) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (b) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the organized militia, or in determining whether a member of the organized militia should be retained on active duty, no person subject to this chapter may, in preparing any such report (a) consider or evaluate the performance of duty of any such member of a court-martial, or (b) give a less favorable rating or evaluation of any member of the organized militia because of the zeal with which such member, as counsel, represented any accused before a court-martial.

Sec. 37. Section 40, chapter 220, Laws of 1963 and RCW 38.38.376 are each amended to read as follows:

(1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by ~~((him))~~ the accused, or by military counsel of his or her own selection if reasonably available as defined in regulations of the governor, or by the defense counsel detailed under RCW 38.38.260. Should the accused have civilian counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as ~~((his))~~ associate counsel; otherwise they shall be excused by the military judge or president of ~~((the court))~~ a special court-martial.

(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters ~~((he))~~ the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate and assist the accused in the submission of any matter under RCW 38.38.536.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when ~~((he is))~~ qualified to be a trial counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when ~~((he is))~~ qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Sec. 38. Section 41, chapter 220, Laws of 1963 and RCW 38.38.380 are each amended to read as follows:

~~((Whenever a general or special court martial deliberates or votes, only the members of the court may be present. After a general court martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court martial cases, the law officer.))~~

(1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to RCW 38.38.328, call the court into session without the presence of the members for the purpose of:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) Holding the arraignment and receiving the pleas of the accused;
and

(d) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to RCW 38.38.368 and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(2) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Sec. 39. Section 42, chapter 220, Laws of 1963 and RCW 38.38.384 are each amended to read as follows:

((A court martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.)) The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

Sec. 40. Section 43, chapter 220, Laws of 1963 and RCW 38.38.388 are each amended to read as follows:

~~((1) Members of a general or special court martial and the law officer of a general court martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.~~

~~(2) Each accused and the trial counsel is entitled to one preemptory challenge, but the law officer may not be challenged except for cause.))~~

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or, if none, the court shall determine the relevance and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and the trial counsel is entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

Sec. 41. Section 44, chapter 220, Laws of 1963 and RCW 38.38.392 are each amended to read as follows:

~~((1) The law officer, interpreters, and, in general and special courts martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.~~

~~(2) Each witness before a military court shall be examined on oath or affirmation.))~~

(1) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person, is detailed to that duty.

(2) Each witness before a court-martial shall be examined on oath.

Sec. 42. Section 45, chapter 220, Laws of 1963 and RCW 38.38.396 are each amended to read as follows:

(1) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(2) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under RCW 38.38.784 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(3) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under RCW 38.38.132 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under RCW 38.38.132.

(4) Periods in which the accused was absent from territory in which the state has the authority to apprehend ~~((him))~~ the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

Sec. 43. Section 46, chapter 220, Laws of 1963 and RCW 38.38.400 are each amended to read as follows:

(1) No person may, without ~~((his))~~ the person's consent, be tried a second time in any military court of the state for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

Sec. 44. Section 47, chapter 220, Laws of 1963 and RCW 38.38.404 are each amended to read as follows:

(1) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that ~~((he))~~ the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if ~~((he))~~ the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though ~~((he))~~ the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the

charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as through the accused had pleaded not guilty.

Sec. 45. Section 48, chapter 220, Laws of 1963 and RCW 38.38.408 are each amended to read as follows:

(1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the governor may prescribe.

(2) The president of a special court-martial, military judge, or a summary court officer may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(d) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state.

Sec. 46. Section 49, chapter 220, Laws of 1963 and RCW 38.38.412 are each amended to read as follows:

(1) Any person not subject to this code who:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the superior court of the state; and

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state (~~(and a military court may punish him in the same manner as the civil courts of the state)~~).

(2) Any person who commits an offense named in subsection (1) of this section shall be tried before the superior court of this state having jurisdiction and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

(3) The prosecuting attorney in any such court, upon the certification of the facts by the military court, commission, court of inquiry, or board, shall prosecute any person violating this section.

Sec. 47. Section 51, chapter 220, Laws of 1963 and RCW 38.38.420 are each amended to read as follows:

(1) At any time after charges have been signed, as provided in RCW 38.38.308, any party may take oral or written depositions unless a military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(a) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing;

(b) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(c) That the present whereabouts of the witness is unknown.

Sec. 48. Section 53, chapter 220, Laws of 1963 and RCW 38.38.428 are each amended to read as follows:

~~((1) Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.~~

~~(2) The law officer of a general court martial and the president of a special court martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court martial or by the president of a special court martial upon any interlocutory question other than a motion for a finding of not~~

guilty, or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the law officer or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in RCW 38.38.432 beginning with the junior in rank.

(3) Before a vote is taken on the findings, the law officer of a general court martial and the president of a special court martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(a) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(d) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state:))

(1) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change a ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in RCW 38.38.432, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(a) That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt; and

(d) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Sec. 49. Section 54, chapter 220, Laws of 1963 and RCW 38.38.432 are each amended to read as follows:

(1) No person may be convicted of an offense, except as provided in RCW 38.38.404(2) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty, or to reconsider a sentence with a view towards decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Sec. 50. Section 56, chapter 220, Laws of 1963 and RCW 38.38.440 are each amended to read as follows:

~~((1) Each court martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad conduct discharge~~

~~or is more than that which could be adjudged by a special court martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the governor may by regulation prescribe.~~

~~(2) A copy of the record of the proceedings of each general and special court martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court martial is not required by subsection (1) hereof, but has been made, the accused may buy such a record under such regulations as the governor may prescribe.)~~

(1) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(2) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the governor may prescribe.

(3) (a) A complete record of the proceedings and testimony shall be prepared:

(i) In each general court-martial case in which the sentence adjudged includes a dismissal, a discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(ii) In each special court-martial case in which the sentence adjudged includes a dishonorable discharge.

(b) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the governor.

(4) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

Sec. 51. Section 58, chapter 220, Laws of 1963 and RCW 38.38.484 are each amended to read as follows:

(1) The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

(2) Unless otherwise provided in regulations to be prescribed by the governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable discharge reduces that member to pay grade E-1, effective on the date of that approval.

(3) If the sentence of a member who is reduced in pay grade under subsection (2) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (2) of this section, the rights and privileges of which the member was deprived because of that reduction shall be restored and the member is entitled to the pay and allowances to which the member would have been entitled for the period the reduction was in effect, had he or she not been so reduced.

Sec. 52. Section 59, chapter 220, Laws of 1963 and RCW 38.38.488 are each amended to read as follows:

~~((1) Whenever a sentence of a court martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowance accrued before that date.~~

~~(2) Any period of confinement included in a sentence of a court martial begins to run from the date the sentence is adjudged by the court martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.~~

~~(3) All other sentences of courts martial are effective on the date ordered executed:))~~

(1) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under RCW 38.38.536.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is ordered to be executed by the convening authority, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is

ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

Sec. 53. Section 60, chapter 220, Laws of 1963 and RCW 38.38.492 are each amended to read as follows:

(1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the ~~((state military forces))~~ organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as ~~((he))~~ the governor may authorize to act under RCW 38.38.080, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

Sec. 54. Section 61, chapter 220, Laws of 1963 and RCW 38.38.532 are each amended to read as follows:

Except as provided in RCW 38.38.196 and 38.38.556, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. ~~((He))~~ The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her.

Sec. 55. Section 63, chapter 220, Laws of 1963 and RCW 38.38.540 are each amended to read as follows:

The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit ~~((his))~~ a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Sec. 56. Section 67, chapter 220, Laws of 1963 and RCW 38.38.556 are each amended to read as follows:

(1) If the convening authority is the governor, ~~((his))~~ the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1), if the sentence of a special court-martial as approved by the convening authority includes a ~~((bad conduct))~~ dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate ~~((or legal officer))~~ of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate ~~((or legal officer))~~ shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the ~~((law specialist or legal officer))~~ judge advocate of the appropriate force of the ~~((state military forces))~~ organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations ~~((prescribed by))~~ of the governor.

(4) The state judge advocate shall review the record of trial in each case sent ~~((to him))~~ for review as provided under subsection ~~((+))~~ (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by ~~((him))~~ the state judge advocate.

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. ~~((He))~~ The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as ~~((he))~~ the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, ~~((he))~~ the state judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, ~~((he))~~ the state judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If ~~((he))~~ the state judge advocate sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, ~~((he))~~ the state judge advocate shall instruct the convening authority to act in accordance with ~~((his))~~ the state judge advocate's decision on the review. If ~~((he))~~ the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, ~~((he))~~ the state judge advocate may dismiss the charges.

(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the ~~((state military forces))~~ organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a ~~((bad conduct))~~ dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

Sec. 57. Section 69, chapter 220, Laws of 1963 and RCW 38.38.564 are each amended to read as follows:

(1) Upon the final review of a sentence of a general court-martial ~~((or of a sentence to a bad conduct discharge))~~, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate ~~((or legal officer))~~, as the case may be, and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the ~~((state military forces))~~ organized militia and who has the qualifications prescribed in RCW 38.38.260, if available, to represent the accused before the reviewing authority, before the staff judge advocate ~~((or legal officer, as the case may be))~~, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by ~~((him))~~ the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate ~~((or legal officer, as the case may be))~~, and before the state judge advocate.

Sec. 58. Section 70, chapter 220, Laws of 1963 and RCW 38.38.568 are each amended to read as follows:

(1) Before the vacation of the suspension of a special court-martial sentence ~~((which as approved includes a bad conduct discharge))~~, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if ~~((he))~~ the probationer so desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the ~~((state military forces))~~ organized militia of which the probationer is a member in all other cases covered by subsection (1) of this section. If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Sec. 59. Section 71, chapter 220, Laws of 1963 and RCW 38.38.572 are each amended to read as follows:

At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal(;) or dishonorable ((~~or bad conduct~~)) discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

Sec. 60. Section 73, chapter 220, Laws of 1963 and RCW 38.38.580 are each amended to read as follows:

(1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable ((~~or bad conduct~~)) discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes.

Sec. 61. Section 82, chapter 220, Laws of 1963 and RCW 38.38.652 are each amended to read as follows:

Any person who:

(1) Procures his or her own enlistment or appointment in the ((~~state military forces~~)) organized militia by knowingly false representation or deliberate concealment as to ((~~his~~)) qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the ((~~state military forces~~)) organized militia by knowingly false representation or deliberate concealment as to ((~~his~~)) eligibility for that separation; shall be punished as a court-martial may direct.

Sec. 62. Section 83, chapter 220, Laws of 1963 and RCW 38.38.656 are each amended to read as follows:

Any person subject to this code who effects an enlistment or appointment in or a separation from the (~~(state military forces)~~) organized militia of any person who is known to (~~(him)~~) the person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Sec. 63. Section 84, chapter 220, Laws of 1963 and RCW 38.38.660 are each amended to read as follows:

(1) Any member of the (~~(state military forces)~~) organized militia who:

(a) Without authority goes or remains absent from (~~(his)~~) the member's unit, organization, or place of duty with intent to remain away therefrom permanently;

(b) Quits (~~(his)~~) the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the (~~(state military forces)~~) organized militia enlists or accepts an appointment in the same or another one of the (~~(state military forces)~~) organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the (~~(state military forces)~~) organized militia who, after tender of (~~(his)~~) a resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

Sec. 64. Section 90, chapter 220, Laws of 1963 and RCW 38.38.684 are each amended to read as follows:

Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer(~~(:)~~) or noncommissioned officer (~~(or petty officer,)~~) while that officer is in the execution of (~~(his)~~) the officer's office;

(2) Wilfully disobeys the lawful order of a warrant officer(~~(:)~~) or noncommissioned officer(~~(, or petty officer,)~~); or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer(~~(:)~~) or noncommissioned officer(~~(, or petty officer,)~~) while that officer is in the execution of (~~(his)~~) the officer's office; shall be punished as a court-martial may direct.

Sec. 65. Section 91, chapter 220, Laws of 1963 and RCW 38.38.688 are each amended to read as follows:

Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the ~~((state military forces))~~ organized militia which it is ~~((his))~~ the person's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of ~~((his))~~ the person's duties; shall be punished as a court-martial may direct.

Sec. 66. Section 98, chapter 220, Laws of 1963 and RCW 38.38.716 are each amended to read as follows:

Any person subject to this code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is ~~((his))~~ the person's duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away ~~((his))~~ arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits ~~((his))~~ a place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the ~~((state military forces))~~ organized militia;

(8) Wilfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is ~~((his))~~ the person's duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

Sec. 67. Section 99, chapter 220, Laws of 1963 and RCW 38.38.720 are each amended to read as follows:

Any person subject to this code who compels or attempts to compel the commander of any of the ~~((state military forces))~~ organized militia of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Sec. 68. Section 108, chapter 220, Laws of 1963 and RCW 38.38.756 are each amended to read as follows:

(1) Any person subject to this code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the ~~((state military forces))~~ organized militia shall be punished as a court-martial may direct.

(2) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the ((state military forces)) organized militia shall be punished as a court-martial may direct.

Sec. 69. Section 112, chapter 220, Laws of 1963 and RCW 38.38.772 are each amended to read as follows:

Any person subject to this code who for the purpose of avoiding work, duty or service in the ((state military forces)) organized militia:

(1) Feigns illness, physical disablement, mental lapse or derangement;
or

(2) Intentionally inflicts self-injury;
shall be punished as a court-martial may direct.

Sec. 70. Section 116, chapter 220, Laws of 1963 and RCW 38.38.788 are each amended to read as follows:

Any person subject to this code:

(1) Who, knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state, or any officer thereof; or

(b) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the ((state military forces)) organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which ((he)) the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the ((state military forces)) organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct.

Sec. 71. Section 119, chapter 220, Laws of 1963 and RCW 38.38.800 are each amended to read as follows:

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the (~~state military forces~~) organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

Sec. 72. Section 120, chapter 220, Laws of 1963 and RCW 38.38.840 are each amended to read as follows:

(1) Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry: PROVIDED, That upon the request of the officer involved such an inquiry shall be instituted as hereinabove set forth.

(2) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the (~~division of~~) state military (~~and naval affairs~~) department, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Sec. 73. Section 121, chapter 220, Laws of 1963 and RCW 38.38.844 are each amended to read as follows:

(1) The following members of the ~~((state military forces))~~ organized militia may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

(a) The state judge advocate and all assistant state judge advocates~~((:));~~

(b) All law specialists~~((:));~~

(c) All summary courts~~_~~martial~~((:));~~

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants~~((:));~~

(e) ~~((All commanding officers of the naval militia;~~

~~((All legal officers;~~

~~((g))~~) The military judge, president, ~~((law officer,))~~ trial counsel, and assistant trial counsel for all general and special courts~~_~~martial~~((:));~~

~~((f))~~) (f) The president and the counsel for the court of any court of inquiry~~((:));~~

~~((f))~~) (g) All officers designated to take a deposition~~((:));~~

~~((f))~~) (h) All persons detailed to conduct an investigation; and

~~((f))~~) (i) All other persons designated by regulations of the governor.

(2) Officers of the ~~((state military forces))~~ organized militia may not be authorized to administer oaths as provided in this section unless they are on active state service or inactive duty for training in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any such person, together with the title of ~~((his))~~ the person's office, is prima facie evidence of ~~((his))~~ the person's authority.

Sec. 74. Section 122, chapter 220, Laws of 1963 and RCW 38.38.848 are each amended to read as follows:

RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member at the time of ~~((his))~~ the member's enlistment or transfer or induction into, or at the time of ~~((his))~~ the member's order to duty in or with any of the ~~((state military forces))~~ organized militia or within thirty days thereafter. They shall also be explained annually to each unit of the ~~((state military forces))~~ organized militia. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the ~~((state military forces))~~ organized militia, upon ~~((his))~~ request, for ~~((his))~~ personal examination.

Sec. 75. Section 123, chapter 220, Laws of 1963 and RCW 38.38.852 are each amended to read as follows:

~~((Any))~~ Members of the ~~((state military forces))~~ organized militia who believe~~((s-himself))~~ themselves wronged by ~~((his))~~ their commanding officer, and who, upon due application to that commanding officer, ~~((is))~~ are refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. The governor or adjutant general shall examine the complaint and take proper measures for redressing the wrong complained of.

Sec. 76. Section 124, chapter 220, Laws of 1963 and RCW 38.38.856 are each amended to read as follows:

(1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that ~~((his))~~ the person's property has been wrongfully taken by members of the ~~((state military forces, he))~~ organized militia, the commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by ~~((him))~~ the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3) ~~((hereof))~~ of this section, on any disbursing officer for the payment by ~~((him))~~ the disbursing officer to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the ~~((state military forces))~~ organized militia to which the offenders belonged.

(3) Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in ~~((his))~~ the person's behalf, and to cross-examine those appearing against him or her. ~~((He))~~ The person has the right of appeal to the next higher commander.

Sec. 77. Section 125, chapter 220, Laws of 1963 and RCW 38.38.860 are each amended to read as follows:

In the ~~((state military forces))~~ organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

Sec. 78. Section 126, chapter 220, Laws of 1963 and RCW 38.38.864 are each amended to read as follows:

(1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue ~~((subpoenas))~~ subpoenae and ~~((subpoenas))~~ subpoenae duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(2) Process and mandates may be issued by summary courts-martial, ~~((provost courts,))~~ or the ~~((president))~~ military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(3) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

Sec. 79. Section 127, chapter 220, Laws of 1963 and RCW 38.38.868 are each amended to read as follows:

Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due ~~((him))~~ the person, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. Notwithstanding any other law, the officer collecting a fine or penalty imposed by a military court upon an officer or enlisted ~~((man))~~ person shall pay it within thirty days to the state treasurer. Such a fine becomes a part of, is credited to, and may be spent from, the military fund of the organization or detachment to which the officer or enlisted ~~((man))~~ person who paid the fine belonged. The treasurer of the state shall then report the amount thereof designating the organization or detachment to which it belongs, to the adjutant general of the state, and shall pay it over to the organization or detachment on request of its commanding officer.

Passed the House February 24, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 49

[House Bill No. 1117]

WORKERS' COMPENSATION—RETROSPECTIVE RATING PROGRAM—
EMPLOYER GROUP PARTICIPATION

AN ACT Relating to requirements for workers' compensation employer group participation in the retrospective rating program; and amending RCW 51.16.035.

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

Sec. 1. Section 16, chapter 289, Laws of 1971 ex. sess. as last amended by section 4, chapter 129, Laws of 1980 and RCW 51.16.035 are each amended to read as follows:

The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

The department may insure the workers' compensation obligations of employers as a group if the following conditions are met:

(1) All the employers in the group are members of an organization that has been in existence for at least two years;

(2) The organization was formed for a purpose other than that of obtaining workers' compensation coverage;

(3) The occupations or industries of the employers in the organization are substantially similar, taking into consideration the nature of the services being performed by workers of such employers; and

(4) ~~((The employers in the group constitute at least fifty percent of the total employers in such organization, and~~

~~{5}))~~ The formation and operation of the group program in the organization will substantially improve accident prevention and claim management for the employers in the group.

In providing an employer group plan under this section, the department may consider an employer group as a single employing entity for purposes of dividends or premium discounts.

Passed the House March 2, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 50

[House Bill No. 1205]

MILITARY DISCHARGES—FREE RECORDATION

AN ACT Relating to recording of discharges; and amending RCW 73.04.030.

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

Sec. 1. Section 1, chapter 38, Laws of 1943 and RCW 73.04.030 are each amended to read as follows:

Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the ((honorable)) discharge of any veteran ((~~who was a resident of the county, at the time of his enlistment or induction into~~)) of the armed forces of the United States who is residing in the state of Washington.

Passed the House February 13, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 51

[Substitute House Bill No. 1287]

ESCROW AGENTS—LICENSE RENEWAL—EXTENSION OF TIME

AN ACT Relating to the license renewal of escrow officers; and amending RCW 18.44.310.

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

Sec. 1. Section 24, chapter 156, Laws of 1977 ex. sess. as amended by section 6, chapter 340, Laws of 1985 and RCW 18.44.310 are each amended to read as follows:

The license of an escrow officer shall be retained and displayed at all times by the certificated escrow agent, and when the officer ceases to represent the agent, the license shall cease to be in force. Notice of such termination shall be given by the next regular business day by the escrow agent to the director and such notice shall be accompanied by and include the surrender of the escrow officer's license. Failure to notify the director of

such termination after demand by the affected escrow officer shall work a forfeiture of the escrow agent's certificate of registration.

The director may hold the escrow officer's license inactive (~~for a period not exceeding three consecutive years~~) upon application of the escrow officer: PROVIDED, That the escrow officer shall pay the annual renewal fee. Such license may be activated upon application of a certificated escrow agent on a form provided by the director (~~(, endorsement by an escrow officer,)~~) and the payment of a fee. The director shall thereupon issue a new license for the unexpired term if such escrow officer is otherwise entitled thereto. An escrow officer's first license shall not be issued inactive.

Passed the House March 6, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 52

[House Bill No. 1348]

EMERGENCY VEHICLES—EXCESS WEIGHT PERMITS

AN ACT Relating to excess weight permits for authorized emergency vehicles; and amending RCW 46.44.091.

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

Sec. 1. Section 46.44.091, chapter 12, Laws of 1961 as last amended by section 31, chapter 151, Laws of 1977 ex. sess. and RCW 46.44.091 are each amended to read as follows:

(1) Except as otherwise provided in subsections (3) and (4) of this section, no special permit shall be issued for movement on any state highway or route of a state highway within the limits of any city or town where the gross weight, including load, exceeds the following limits:

(a) Twenty-two thousand pounds on a single axle or on dual axles with a wheelbase between the first and second axles of less than three feet six inches;

(b) Forty-three thousand pounds on dual axles having a wheelbase between the first and second axles of not less than three feet six inches but less than seven feet;

(c) On any group of axles or in the case of a vehicle employing two single axles with a wheel base between the first and last axle of not less than seven feet but less than ten feet, a weight in pounds determined by multiplying six thousand five hundred times the distance in feet between the center of the first axle and the center of the last axle of the group;

(d) On any group of axles with a wheel base between the first and last axle of not less than ten feet but less than thirty feet, a weight in pounds determined by multiplying two thousand two hundred times the sum of

twenty and the distance in feet between the center of the first axle and the center of the last axle of the group;

(e) On any group of axles with a wheel base between the first and last axle of thirty feet or greater, a weight in pounds determined by multiplying one thousand six hundred times the sum of forty and the distance in feet between the center of the first axle and the center of the last axle of the group.

(2) The total weight of a vehicle or combination of vehicles allowable by special permit under subsection (1) of this section shall be governed by the lesser of the weights obtained by using the total number of axles as a group or any combination of axles as a group.

(3) The weight limitations pertaining to single axles may be exceeded to permit the movement of equipment operating upon single pneumatic tires having a rim width of twenty inches or more and a rim diameter of twenty-four inches or more or dual pneumatic tires having a rim width of sixteen inches or more and a rim diameter of twenty-four inches or more and specially designed vehicles manufactured and certified for special permits prior to July 1, 1975.

(4) Permits may be issued for weights in excess of the limitations contained in subsection (1) of this section on highways or sections of highways which have been designed and constructed for weights in excess of such limitations, or for any shipment duly certified as necessary by military officials, or by officials of public or private power facilities, or when in the opinion of the department of transportation the movement or action is a necessary movement or action: PROVIDED, That in the judgment of the department of transportation the structures and highway surfaces on the routes involved are capable of sustaining weights in excess of such limitations and it is not reasonable for economic or operational considerations to transport such excess weights by rail or water for any substantial distance of the total mileage applied for.

(5) Permits may be issued for the operation of fire trucks on the public highways if the maximum gross weight on any single axle does not exceed twenty-four thousand pounds and the gross weight on any tandem axle does not exceed forty-three thousand pounds.

(6) Application shall be made in writing on special forms provided by the department of transportation and shall be submitted at least thirty-six hours in advance of the proposed movement. An application for a special permit for a gross weight of any combination of vehicles exceeding two hundred thousand pounds shall be submitted in writing to the department of transportation at least thirty days in advance of the proposed movement.

Passed the House March 2, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 53

[House Bill No. 1454]

TRANSPORTATION BENEFIT DISTRICTS—ORGANIZATION AND POWERS

AN ACT Relating to transportation benefit districts; and amending RCW 36.73.020, 35.21.225, 36.73.040, and 84.52.052.

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

Sec. 1. Section 2, chapter 327, Laws of 1987 and RCW 36.73.020 are each amended to read as follows:

The legislative authority of a county may establish one or more transportation benefit districts within the county for the purpose of acquiring, constructing, improving, providing, and funding ((capital costs for)) any city street, county road, or state highway improvement within the district that is (1) consistent with state, regional, and local transportation plans, (2) necessitated by existing or reasonably foreseeable congestion levels attributable to economic growth, and (3) partially funded by local government or private developer contributions, or a combination of such contributions. Such transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway; and all such transportation improvements shall be administered and maintained as other public streets, roads, and highways. The district may not include any area within the corporate limits of a city unless the city legislative authority has agreed to the inclusion pursuant to chapter 39.34 RCW. The agreement shall specify the area and such powers as may be granted to the benefit district.

The members of the county legislative authority ((shall be)), acting ex officio and independently, shall compose the governing body of the district: PROVIDED, That where a transportation benefit district includes any portion of an incorporated city, town, or another county, the district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The county treasurer shall act as the ex officio treasurer of the district. The electors of the district shall all be registered voters residing within the district. For purposes of this section, the term "city" means both cities and towns.

Sec. 2. Section 3, chapter 327, Laws of 1987 and RCW 35.21.225 are each amended to read as follows:

The legislative authority of a city may establish one or more transportation benefit districts within a city for the purpose of acquiring, constructing, improving, providing, and funding ((capital costs for)) any city street, county road, or state highway improvement that is (1) consistent with state, regional, and local transportation plans, (2) necessitated by existing or reasonably foreseeable congestion levels attributable to economic growth, and

(3) partially funded by local government or private developer contributions, or a combination of such contributions. Such transportation improvements shall be owned by the city of jurisdiction if located in an incorporated area, by the county of jurisdiction if located in an unincorporated area, or by the state in cases where the transportation improvement is or becomes a state highway; and all such transportation improvements shall be administered as other public streets, roads, and highways. The district may include any area within the corporate limits of another city if that city has agreed to the inclusion pursuant to chapter 39.34 RCW. The district may include any unincorporated area if the county legislative authority has agreed to the inclusion pursuant to chapter 39.34 RCW. The agreement shall specify the area and such other powers as may be granted to the benefit district.

The members of the city legislative authority ((shall be)), acting ex officio and independently, shall compose the governing body of the district. The city treasurer shall act as the ex officio treasurer of the district: PROVIDED, That where a transportation benefit district includes any unincorporated area or portion of another city, the district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The electors of the district shall all be registered voters residing within the district. For the purposes of this section, the term "city" means both cities and towns.

Sec. 3. Section 4, chapter 327, Laws of 1987 and RCW 36.73.040 are each amended to read as follows:

A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district shall apply to the district.

Sec. 4. Section 18, chapter 1, Laws of 1988 ex. sess. and RCW 84.52-.052 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. Any county, metropolitan park district, park and recreation service area, park and recreation

district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, transportation benefit district, and convention district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and RCW 84.52-.043, or RCW 84.55.010 through 84.55.050, when authorized so to do by the electors of such county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, transportation benefit district, and convention district in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 64 and as thereafter amended, at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, transportation benefit district, city, town, or cultural arts, stadium, and convention district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

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

Passed the House March 13, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 54

[House Bill No. 1290]

WASHINGTON COORDINATE SYSTEM OF 1927—ADOPTION

AN ACT Relating to the Washington coordinate system; amending RCW 58.20.010, 58.20.020, 58.20.030, 58.20.050, 58.20.060, 58.20.070, 58.20.080, and 58.20.090; adding new sections to chapter 58.20 RCW; and repealing RCW 58.20.010, 58.20.020, 58.20.030, 58.20.040, 58.20.050, 58.20.060, 58.20.070, 58.20.080, 58.20.090, and 58.20.900.

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

Sec. 1. Section 1, chapter 168, Laws of 1945 and RCW 58.20.010 are each amended to read as follows:

The system of plane coordinates which has been established by the United States coast and geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is hereafter to be known and designated as the "Washington coordinate system of 1927".

For the purpose of the use of this system the state is divided into a "north zone" and a "south zone".

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima.

Sec. 2. Section 2, chapter 168, Laws of 1945 and RCW 58.20.020 are each amended to read as follows:

As established for use in the north zone, the Washington coordinate system of 1927 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1927, north zone".

As established for use in the south zone, the Washington coordinate system of 1927 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1927, south zone".

Sec. 3. Section 3, chapter 168, Laws of 1945 and RCW 58.20.030 are each amended to read as follows:

The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of

a foot. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1927, of the triangulation and traverse stations of the United States coast and geodetic survey within the state of Washington, as those coordinates have been determined by the said survey.

Sec. 4. Section 5, chapter 168, Laws of 1945 and RCW 58.20.050 are each amended to read as follows:

For purposes of more precisely defining the Washington coordinate system of 1927, the following definition by the United States coast and geodetic survey is adopted:

The Washington coordinate system of 1927, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the ((meridian)) parallel 47° 00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The Washington coordinate system of 1927, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The position of the Washington coordinate system of 1927 shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States coast and geodetic survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose coordinates have been computed on the system herein defined. Any such station may be used to establish a survey connection with the Washington coordinate system of 1927.

Sec. 5. Section 6, chapter 168, Laws of 1945 and RCW 58.20.060 are each amended to read as follows:

No coordinates based on the Washington coordinate system of 1927, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in RCW 58.20.050: PROVIDED, That said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions.

Sec. 6. Section 7, chapter 168, Laws of 1945 and RCW 58.20.070 are each amended to read as follows:

The use of the term "Washington coordinate system of 1927" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system of 1927 as defined in this chapter.

Sec. 7. Section 8, chapter 168, Laws of 1945 and RCW 58.20.080 are each amended to read as follows:

Whenever coordinates based on the Washington coordinate system of 1927 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates.

Sec. 8. Section 9, chapter 168, Laws of 1945 and RCW 58.20.090 are each amended to read as follows:

Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927.

NEW SECTION. Sec. 9. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 9 through 21 of this act:

(1) "Committee" means the interagency federal geodetic control committee or its successor;

(2) "GRS 80" means the geodetic reference system of 1980 as adopted in 1979 by the international union of geodesy and geophysics defined on an equipotential ellipsoid;

(3) "National geodetic survey" means the national ocean service's national geodetic survey of the national oceanic and atmospheric administration, United States department of commerce, or its successor;

(4) "Washington coordinate system of 1927" means the system of plane coordinates in effect under this chapter until July 1, 1990, which is based on the North American datum of 1927 as determined by the national geodetic survey of the United States department of commerce;

(5) "Washington coordinate system of 1983" means the system of plane coordinates under this chapter based on the North American Datum of 1983 as determined by the national geodetic survey of the United States department of commerce.

NEW SECTION. Sec. 10. Until July 1, 1990, the Washington coordinate system of 1927, or its successor, the Washington coordinate system of

1983, may be used in Washington for expressing positions or locations of points on the surface of the earth. On and after that date, the Washington coordinate system of 1983 shall be the designated coordinate system in Washington. The Washington coordinate system of 1927 may be used only for purposes of reference after June 30, 1990.

NEW SECTION. Sec. 11. The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is designated as the "Washington coordinate system of 1983."

For the purposes of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima.

NEW SECTION. Sec. 12. As established for use in the north zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, north zone."

As established for use in the south zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, south zone."

NEW SECTION. Sec. 13. "N" and "E" shall be used in labeling coordinates of a point on the earth's surface and in expressing the position or location of such point relative to the origin of the appropriate zone of this system, expressed in meters and decimals of a meter. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1983, of the horizontal control stations of the national geodetic survey within the state of Washington, as those coordinates have been determined, accepted, or adjusted by the survey.

NEW SECTION. Sec. 14. When any tract of land to be defined by a single description extends from one into the other of the coordinate zones under section 11 of this act, the positions of all points on its boundaries may be referred to either of the zones, the zone which is used being specifically named in the description.

NEW SECTION. Sec. 15. For purposes of more precisely defining the Washington coordinate system of 1983, the following definition by the national geodetic survey is adopted:

The Washington coordinate system of 1983, north zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

The Washington coordinate system of 1983, south zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

NEW SECTION. Sec. 16. Coordinates based on the Washington coordinate system of 1983, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public land records or deed records if the survey method used for the determination of these coordinates is established in conformity with standards and specifications prescribed by the interagency federal geodetic control committee, or its successor. These surveys shall be connected to monumented control stations that are adjusted to and published in the national network of geodetic control by the national geodetic survey and such connected horizontal control stations shall be described in the land or deed record. Standards and specifications of the committee in force on the date of the survey shall apply. In all instances where reference has been made to such coordinates in land surveys or deeds, the scale and sea level factors shall be stated for the survey lines used in computing ground distances and areas.

The position of the Washington coordinate system of 1983 shall be marked on the ground by horizontal geodetic control stations which have been established in conformity with the survey standards adopted by the committee and whose geodetic positions have been rigorously adjusted on the North American datum of 1983, and whose coordinates have been computed and published on the system defined in sections 9 through 21 of this act. Any such control station may be used to establish a survey connection with the Washington coordinate system of 1983.

NEW SECTION. Sec. 17. Any conversion of coordinates between the meter and the United States survey foot shall be based upon the length of the meter being equal to exactly 39.37 inches.

NEW SECTION. Sec. 18. The use of the term "Washington coordinate system of 1983" on any map, report of survey, or other document, shall

be limited to coordinates based on the Washington coordinate system of 1983 as defined in this chapter.

NEW SECTION. Sec. 19. Whenever coordinates based on the Washington coordinate system of 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates.

NEW SECTION. Sec. 20. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927 or 1983.

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 22. The following acts or parts of acts now or hereafter amended are each repealed effective July 1, 1990:

(1) Section 1, chapter 168, Laws of 1945, section 1 of this act and RCW 58.20.010;

(2) Section 2, chapter 168, Laws of 1945, section 2 of this act and RCW 58.20.020;

(3) Section 3, chapter 168, Laws of 1945, section 3 of this act and RCW 58.20.030;

(4) Section 4, chapter 168, Laws of 1945 and RCW 58.20.040;

(5) Section 5, chapter 168, Laws of 1945, section 4 of this act and RCW 58.20.050;

(6) Section 6, chapter 168, Laws of 1945, section 5 of this act and RCW 58.20.060;

(7) Section 7, chapter 168, Laws of 1945, section 6 of this act and RCW 58.20.070;

(8) Section 8, chapter 168, Laws of 1945, section 7 of this act and RCW 58.20.080;

(9) Section 9, chapter 168, Laws of 1945, section 8 of this act and RCW 58.20.090; and

(10) Section 10, chapter 168, Laws of 1945 and RCW 58.20.900.

NEW SECTION. Sec. 23. Sections 9 through 21 of this act are each added to chapter 58.20 RCW.

Passed the House February 13, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 55

[Substitute House Bill No. 1548]

PATERNITY DETERMINATION

AN ACT Relating to paternity; amending RCW 74.20A.020, 70.58.080, and 26.26.040; and adding new sections to chapter 74.20A RCW.

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

Sec. 1. Section 2, chapter 164, Laws of 1971 ex. sess. as last amended by section 4, chapter 276, Laws of 1985 and RCW 74.20A.020 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of ((~~twenty-one who is not otherwise emancipated~~)) eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support issued by the department pursuant to RCW 74.20A-.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist and continue as provided for in RCW 26.16.205 until the relationship is terminated by death or dissolution of marriage.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico.

Sec. 2. Section 12, chapter 83, Laws of 1907 as last amended by section 8, chapter 5, Laws of 1961 ex. sess. and RCW 70.58.080 are each amended to read as follows:

(1) Within ten days after the birth of any child, the attending physician ((or)), midwife, or his or her agent shall ((file)):

(a) Fill out a certificate of birth, ((properly and completely filled out,)) giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or the father has signed an acknowledgement of paternity, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the local registrar of the district in which the birth occurred((, within ten days after the birth)).

(2) The local registrar shall forward the birth certificate, any signed affidavit acknowledging paternity, and the mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state office of vital statistics shall make available to the office of support enforcement the birth certificates, the mother's and father's social security numbers and paternity affidavits.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an affidavit acknowledging paternity. The completed affidavit shall be filed with the local registrar. The affidavit shall contain or have attached:

(i) A sworn statement by the mother consenting to the assertion of paternity and stating that this is the only possible father;

(ii) A statement by the father that he is the natural father of the child;

(iii) Written information, furnished by the department of social and health services, explaining the implications of signing, including parental rights and responsibilities; and

(iv) The social security numbers of both parents.

(b) Provide written information, furnished by the department of social and health services, to the mother regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services.

(5) The physician or midwife is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an affidavit acknowledging paternity is filed with the state office of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no putative father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named".

NEW SECTION. Sec. 3. A new section is added to chapter 74.20A RCW to read as follows:

(1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics, the office of support enforcement may serve a notice and finding of parental responsibility

on him. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the office of support enforcement initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26-.060 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the parent is later found not to be the father.

(4) An alleged father who denies being a responsible parent may request that a blood test be administered at any time. The request for testing shall be in writing and served on the office of support enforcement personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the office of support enforcement shall file a copy of the results with the state office of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state office of vital statistics shall remove the alleged father's name from the birth certificate.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the office of support enforcement to initiate an action under RCW 26.26.060 to determine the existence of the parent-child relationship. If the office of support enforcement initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the office of support enforcement to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

Sec. 4. Section 5, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.040 are each amended to read as follows:

(1) A man is presumed to be the natural father of a child for all intents and purposes if:

~~((1))~~ (a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

~~((2))~~ (b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation;

~~((3))~~ (c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

~~((a))~~ (i) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics,

~~((b))~~ (ii) With his consent, he is named as the child's father on the child's birth certificate, or

~~((c))~~ (iii) He is obligated to support the child under a written voluntary promise or by court order;

~~((4))~~ (d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or

~~((5))~~ (e) He acknowledges his paternity of the child pursuant to section 2 of this act or in a writing filed with the ((registrar)) state office of vital statistics, ((who)) which shall promptly inform the mother of the filing of the acknowledgment, ((and)) if she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the registrar of vital statistics. ((If another man is presumed under subsections (1), (2), (3), or (4) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted:)) In order to enforce rights of residential time, custody, and visitation, a man presumed to be the father as a result of filing a written acknowledgement must seek appropriate judicial orders under this title.

(2) A presumption under this section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

NEW SECTION. Sec. 5. A new section is added to chapter 74.20A RCW to read as follows:

If an adjudicative proceeding is requested by an alleged father under section 3 of this act, the department shall mail a copy of the notice of hearing to the mother at her last known address. If the mother appears for the proceeding, she shall be allowed to participate in it. Participation includes giving testimony, and being present for or listening to other testimony offered in the proceeding. Nothing in this section shall preclude the administrative law judge from limiting participation to preserve the confidentiality of information protected by law.

Passed the House March 8, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 56

[House Bill No. 1480]

PUBLIC EMPLOYEES—PRODUCTIVITY AWARDS AND INCENTIVE PAY

AN ACT Relating to the productivity board; amending RCW 41.60.041, 41.60.100, 41.60.110, 41.60.120, and 41.60.150; making an appropriation; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 9, chapter 167, Laws of 1982 as last amended by section 3, chapter 387, Laws of 1987 and RCW 41.60.041 are each amended to read as follows:

(1) Cash awards for suggestions generating net savings to the state shall be ten percent of the net savings.

(2) No award may be granted in excess of ten thousand dollars.

(3) If the suggestion is significantly modified when implemented, the percentage specified in subsection (1) of this section may be decreased at the option of the board.

(4) The board shall establish guidelines for making cash awards for suggestions for which benefits to the state are intangible or for which benefits cannot be calculated. ~~((In cases where cost avoidances are identified, the state personnel board and the higher education personnel board in consultation with the productivity board shall adopt rules which allow agencies and institutions of higher education to grant leave in lieu of cash awards.))~~

(5) Funds for the awards shall be drawn from the appropriation of the agency benefiting from the employee's suggestion. If the suggestion reduces costs to a nonappropriated fund or reduces costs paid without appropriation from a nonappropriated portion of an appropriated fund, an award may be paid from the benefitting fund or account without appropriation.

(6) Awards ~~((and fees))~~ may be paid to state employees for suggestions which generate new or additional money for the general fund ~~((may be drawn from the general fund by joint approval))~~ or any other funds of the state. The director of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board ~~((and the director of financial management.~~

~~(7) In addition to the amount awarded, the agency shall transfer ten percent of the savings to the department of personnel service fund. Moneys so transferred shall be used exclusively for the operations of the productivity board or as an offset to any amount appropriated to the productivity board for administrative expenses from another revenue source, other than that provided under RCW 41.60.120.~~

~~The productivity board at least annually shall review amounts transferred to the department of personnel service fund under this section and may reduce the percentage of savings to be transferred or temporarily suspend transfer if cash receipts exceed needs for program administration)).~~ Transfers shall be made from other funds of the state to the general fund, in amounts equal to award payments made by the general fund, for suggestions generating new or additional money for those other funds.

Sec. 2. Section 2, chapter 167, Laws of 1982 as last amended by section 5, chapter 387, Laws of 1987 and RCW 41.60.100 are each amended to read as follows:

With the exception of the legislative and judicial branches, any organizational unit of any agency of state government having an identifiable

budget or having its financial records maintained according to an accounting system which identifies the expenditures and receipts properly attributable to that unit may apply to the board for selection as a candidate for the award of teamwork incentive pay to its employees. The application shall be submitted prior to the beginning of any year and shall have the approval of the head of the agency within which the unit is located.

Applications shall be in the form specified by the board and contain such information as the board ~~((may require, including))~~ requires. This may include, but is not limited to ((those evaluation components developed by the applying unit which will provide)) quantitative measures which establish a data base of program output ((and)) or performance expectations, or both. This data base is used to evaluate savings in accordance with RCW 41.60.110(1).

The board shall evaluate the applications submitted. From those proposals which are considered to be reasonable and practical and which are found to include developed performance indicators which lend themselves to a judgment of success or failure, the board shall select the units to participate in the teamwork incentive pay program.

Sec. 3. Section 3, chapter 167, Laws of 1982 as last amended by section 6, chapter 387, Laws of 1987 and RCW 41.60.110 are each amended to read as follows:

(1) To qualify for the award of teamwork incentive pay to its employees, a unit selected shall demonstrate to the satisfaction of the board that it has operated during the year of participation at a lower cost with either an increase in the level of services rendered or with no decrease in the level of services rendered.

(a) A unit completing its first year of participation shall compare costs during that year of participation to (i) the fiscal year expenditures for the year immediately preceding the first year of participation, or (ii) an average derived from the unit's historical data, or (iii) engineered standards used in conjunction with an average derived from the unit's historical data;

(b) A unit participating in the teamwork incentive pay program for two or more ((than one)) consecutive years ((shall)) may choose to compare its costs during the current year of participation with (i) its costs for the immediately preceding year, or (ii) a yearly average of its costs for the preceding two or three years in the teamwork incentive program; ((and))

(c) For the purposes of (a) of this ((section)) subsection, a unit's historical data shall be restricted to data generated during the period of three years or less immediately preceding the unit's first year of participation in the teamwork incentive pay program; and

(d) For the purposes of (b) of this subsection, a unit's costs for preceding years may include the costs calculated under (a) (i), (ii), or (iii) of this subsection for years the unit participated in the teamwork incentive pay program.

(2) The board shall satisfy itself from documentation submitted by the organizational unit that the claimed cost of operation is real and not merely apparent and that it is not, in whole or in part, the result of:

- (a) Chance;
- (b) A lowering of the quality of the service rendered;
- (c) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding year;
- (d) Stockpiling inventories in the immediately preceding year so as to reduce requirements in the eligible year;
- (e) Substitution of federal funds, other receipts, or nonstate funds for state appropriations;
- (f) Unreasonable postponement of payments of accounts payable until the year immediately following the eligible year;
- (g) Shifting of expenses to another unit of government; or
- (h) Any other practice, event, or device which the board decides has caused a distortion which makes it falsely appear that a savings or increase in level of services has occurred.

(3) The board shall consider as legitimate savings those reductions in expenditures made possible by such items as the following:

- (a) Reductions in overtime;
- (b) Elimination of consultant fees;
- (c) Less temporary help;
- (d) Improved systems and procedures;
- (e) Better deployment and utilization of personnel;
- (f) Elimination of unnecessary travel;
- (g) Elimination of unnecessary printing and mailing;
- (h) Elimination of unnecessary payments for items such as advertising;
- (i) Elimination of waste, duplication, and operations of doubtful value;
- (j) Improved space utilization; and
- (k) Any other items determined by the board to represent cost savings.

Sec. 4. Section 4, chapter 167, Laws of 1982 as last amended by section 7, chapter 387, Laws of 1987 and RCW 41.60.120 are each amended to read as follows:

At the conclusion of the eligible year, the board shall compare the expenditures for that year of each unit selected against the expenditures of that unit for the immediately preceding year or expenditures determined in accordance with RCW 41.60.110(1) (a) and (b) and, after making such adjustments as in the board's judgment are required to eliminate distortions, shall determine the amount, if any, that the unit has reduced the unit's cost of operations or increased its level of services in the eligible year. Adjustments to eliminate distortions may include any legislative increases in employee compensation and inflationary increases in the cost of services, materials, and supplies. If the board also determines that in the board's

judgment a unit qualifies for an award, the board shall award to the employees of that unit a sum equal to twenty-five percent of the amount determined to be the savings to the state for the level of services rendered. The amount awarded shall be divided and distributed in equal shares to the employees of the unit, except that employees who worked for that unit less than the twelve months of the year shall receive only a pro rata share based on the fraction of the year worked for that unit. Funds for this teamwork incentive pay shall be drawn from the agency in which the unit is located.

~~((In addition to the amount awarded, the agency shall transfer ten percent of the savings to the department of personnel service fund. Moneys so transferred shall be used exclusively for the operations of the productivity board or as an offset to any amount appropriated to the productivity board for administrative expenses from another revenue source, other than that provided under RCW 41.60.120. The productivity board at least annually shall review amounts transferred to the department of personnel service fund under this section and may reduce the percentage of savings to be transferred or temporarily suspend transfer if cash receipts exceed needs for program administration.))~~

Sec. 5. Section 7, chapter 114, Laws of 1985 and RCW 41.60.150 are each amended to read as follows:

Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees for accomplishments including outstanding achievements, safety performance, and longevity. Recognition awards ~~((which))~~ may not exceed ~~((fifty))~~ one hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award.

NEW SECTION. Sec. 6. The sum of fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the office of financial management to carry out the purposes of RCW 41.60.041(6).

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House March 13, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 57

[Substitute House Bill No. 1355]

STATE MOTOR VEHICLE MANAGEMENT

AN ACT Relating to public motor vehicle operations; amending RCW 43.19.605, 43.19.620, 43.19.630, and 46.08.065; adding new sections to chapter 43.19 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Uniform management policies, practices, and data systems governing state-owned passenger motor vehicles will increase efficiency of the state's motor vehicle operations, result in cost savings, and contribute to effective use of motor vehicle assets in support of state employees conducting state business;

(2) To ensure compliance with federal and state environmental protection laws, the state must establish an orderly process for the identification, inspection, and, if necessary, repair or replacement of state-owned fuel storage tanks;

(3) Establishment of a state-wide fuel purchase, distribution, and accounting system will result in savings to the state and its agencies on fuel purchases;

(4) Effective safe driving programs for employees who drive the state's motor vehicles will reduce accidents, protect employees from injury and death, and avoid costs associated with liability claims and damage to state property; and

(5) Establishment of reasonable policies for vehicle life-cycle replacement, vehicle marking, and other efficiency and performance practices can result in significant cost savings to the state.

It is therefore the intent of the legislature to improve the service, efficiency, cost-effectiveness, and safety of passenger motor vehicle operations in state government by requiring the department of general administration to establish policies, procedures, and standards that apply to those operations in all state agencies and institutions of higher education. The policies, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management pursuant to RCW 43.41.130.

NEW SECTION. Sec. 2. (1) For purposes of sections 1 through 5 of this act, (a) the term "state agency" has the meaning given it in RCW 43.19.560; and (b) "passenger motor vehicle" means any sedan, station wagon, van, light truck, or other motor vehicle under ten thousand pounds gross vehicle weight.

(2) Nothing in this chapter may be construed to mean that passenger motor vehicles or related facilities and equipment owned or operated by other agencies are transferred to the department of general administration.

NEW SECTION. Sec. 3. (1) To carry out the purposes of sections 1 through 5 of this act and RCW 46.08.065, the director of general administration has the following powers and duties:

(a) To develop and implement a state-wide information system to collect, analyze, and disseminate data on the acquisition, operation, management, maintenance, repair, disposal, and replacement of all state-owned passenger motor vehicles. State agencies shall provide the department with such data as is necessary to implement and maintain the system. The department shall provide state agencies with information and reports designed to assist them in achieving efficient and cost-effective management of their passenger motor vehicle operations.

(b) To survey state agencies to identify the location, ownership, and condition of all state-owned fuel storage tanks.

(c) In cooperation with the department of ecology and other public agencies, to prepare a plan and funding proposal for the inspection and repair or replacement of state-owned fuel storage tanks, and for the clean-up of fuel storage sites where leakage has occurred. The plan and funding proposal shall be submitted to the governor no later than December 1, 1989.

(d) To develop and implement a state-wide motor vehicle fuel purchase, distribution, and accounting system to be used by all state agencies and their employees. The director may exempt agencies from participation in the system if the director determines that participation interferes with the statutory duties of the agency.

(e) To establish minimum standards and requirements for the content and frequency of safe driving instruction for state employees operating state-owned passenger motor vehicles, which shall include consideration of employee driving records. In carrying out this requirement, the department shall consult with other agencies that have expertise in this area.

(f) To develop a schedule, after consultation with the state motor vehicle advisory committee and affected state agencies, for state employees to participate in safe driving instruction.

(g) To require all state employees to provide proof of a valid Washington state driver's license prior to operating a state-owned passenger vehicle.

(h) To develop standards for the efficient and economical replacement of all categories of passenger motor vehicles used by state agencies and provide those standards to state agencies and the office of financial management.

(i) To develop and implement a uniform system and standards to be used for the marking of passenger motor vehicles as state-owned vehicles as provided for in RCW 46.08.065. The system shall be designed to enhance

the resale value of passenger motor vehicles, yet ensure that the vehicles are clearly identified as property of the state.

(j) To develop and implement other programs to improve the performance, efficiency, and cost-effectiveness of passenger motor vehicles owned and operated by state agencies.

(k) To consult with state agencies and institutions of higher education in carrying out sections 1 through 5 of this act.

(2) The director shall establish an operational unit within the department to carry out subsection (1) of this section. The director shall employ such personnel as are necessary to carry out sections 1 through 5 of this act. Not more than three employees within the unit may be exempt from chapter 41.06 RCW.

(3) No later than December 31, 1992, the director shall report to the governor and appropriate standing committees of the legislature on the implementation of programs prescribed by this section, any cost savings and efficiencies realized by their implementation, and recommendations for statutory changes.

NEW SECTION. Sec. 4. (1) The state motor vehicle advisory committee is created. The committee shall consist of not more than fifteen members appointed by the director. The governor shall designate the chair of the committee. Membership on the committee shall include representatives of state agencies, institutions of higher education, and the private sector. Any private sector member appointed to the committee shall have expertise in motor vehicle management.

(2) The committee shall advise the director on policies, procedures, standards, and implementation of programs required by sections 1 through 5 of this act. The director shall provide such staff assistance as is necessary for the operation of the committee.

(3) Members of the committee shall be reimbursed for travel expenses to attend meetings of the committee in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 5. The motor transport account shall be used to pay the costs of carrying out the programs provided for in sections 1 through 5 of this act, unless otherwise specified by law. The director of general administration may recover the costs of the programs by billing agencies that own and operate passenger motor vehicles on the basis of a per vehicle charge. The director of general administration, after consultation with affected state agencies and recommendation of the motor vehicle advisory committee, shall establish the rates. All rates shall be approved by the director of financial management. The proceeds generated by these charges shall be used solely to carry out sections 1 through 5 of this act.

Sec. 6. Section 11, chapter 167, Laws of 1975 1st ex. sess. and RCW 43.19.605 are each amended to read as follows:

No cash reimbursement shall be made to agencies for property transferred under RCW 43.19.600 to the extent that such property was originally acquired without cost or was purchased from general fund appropriations. The value of such property shall be entered upon the accounts of the motor transport account as an amount due the agency from which the vehicle was transferred. For such property purchased from dedicated, revolving, or trust funds, the value at the time of transfer shall also be entered upon the accounts of the motor transport account as an amount due the agency and fund from which the vehicle transferred was purchased and maintained. If surplus funds are available in the motor transport account, the agency may be paid all or part of the amount due to the dedicated, revolving, or trust fund concerned. Otherwise, the credit for the amount due shall be applied proportionately over the remaining undepreciated life of such property. The prorated credits shall be applied monthly by the director of general administration against any monthly or other charges for motor vehicle transportation services rendered the agency.

To the extent surplus funds are available in the motor transport account, the ~~((automotive policy board))~~ director of general administration may direct a cash reimbursement to a dedicated, revolving, or trust fund where an amount due such a fund will not be charged off to services rendered by the department of general administration within a reasonable time.

Any disagreement between the supervisor of motor transport and an agency as to the amount of reimbursement to which it may be entitled shall be resolved by the director of general administration ~~((with the advice and consent of the automotive policy board))~~.

Sec. 7. Section 14, chapter 167, Laws of 1975 1st ex. sess. as amended by section 103, chapter 151, Laws of 1979 and RCW 43.19.620 are each amended to read as follows:

The director of general administration, through the supervisor of motor transport, shall adopt, promulgate, and enforce such regulations as may be deemed necessary to accomplish the purpose of RCW 43.19.560 through 43.19.630, 43.41.130, and 43.41.140. Such regulations, in addition to other matters, shall provide authority for any agency director or his delegate to approve the use on official state business of personally owned or commercially owned rental passenger motor vehicles. Before such an authorization is made, it must first be reasonably determined that state owned passenger vehicles or other suitable transportation is not available at the time or location required or that the use of such other transportation would not be conducive to the economical, efficient, and effective conduct of business.

Such regulations shall be consistent with and shall carry out the objectives of the general policies and guidelines adopted by the office of financial management pursuant to RCW 43.41.130 ~~((, after approval by the automotive policy board))~~.

Sec. 8. Section 16, chapter 167, Laws of 1975 1st ex. sess. as amended by section 104, chapter 151, Laws of 1979 and RCW 43.19.630 are each amended to read as follows:

RCW 43.19.560 through 43.19.620, 43.41.130, and 43.41.140 shall not be construed to prohibit a state officer or employee from using his personal motor vehicle on state business and being reimbursed therefor, where permitted under state travel policies, rules, and regulations promulgated by the office of financial management (~~((after concurrence of the automotive policy board))~~), and where such use is in the interest of economic, efficient, and effective management and performance of official state business.

Sec. 9. Section 46.08.065, chapter 12, Laws of 1961 as amended by section 1, chapter 169, Laws of 1975 1st ex. sess. and RCW 46.08.065 are each amended to read as follows:

(1) It (~~((shall be))~~) is unlawful for any public officer having charge of any vehicle (~~((other than a motorcycle))~~) owned or controlled by any county, city, town, or public body in this state other than the state of Washington and used in public business to operate the same upon the public highways of this state unless and until there shall be displayed upon such automobile or other motor vehicle in letters of contrasting color not less than one and one-quarter inches in height in a conspicuous place on the right and left sides thereof, the name of such county, city, town, or other public body, together with the name of the department or office upon the business of which the said vehicle is used. This section shall not apply to vehicles of a sheriff's office, local police department, or any vehicles used by local peace officers under public authority for special undercover or confidential investigative purposes. This subsection shall not apply to: (a) Any municipal transit vehicle operated for purposes of providing public mass transportation; (b) any vehicle governed by the requirements of subsection (4) of this section; nor to ~~((b))~~ (c) any motor vehicle on loan to a school district for driver training purposes. It shall be lawful and constitute compliance with the provisions of this section, however, for the governing body of the appropriate county, city, town, or public body other than the state of Washington or its agencies to adopt and use a distinctive insignia which shall be not less than six inches in diameter across its smallest dimension and which shall be displayed conspicuously on the right and left sides of the vehicle. Such insignia shall be in a color or colors contrasting with the vehicle to which applied for maximum visibility. The name of the public body owning or operating the vehicle shall also be included as part of or displayed above such approved insignia in colors contrasting with the vehicle in letters not less than one and one-quarter inches in height. Immediately below the lettering identifying the public entity and agency operating the vehicle or below an approved insignia shall appear the words "for official use only" in letters at least one inch high in a color contrasting with the color of the vehicle. The appropriate governing body may provide by rule or ordinance for marking of passenger

motor vehicles as prescribed in subsection (2) of this section or for exceptions to the marking requirements for local governmental agencies for the same purposes and under the same circumstances as permitted for state agencies under ((subsections (4) and (5))) subsection (3) of this section.

~~(2) ((Except as provided by subsections (3), (4), or (5) of this section, every state office, agency, commission, department, or institution financed in whole or in part from funds appropriated by the legislature shall plainly and conspicuously mark the right and left front doors of each motor vehicle other than a motorcycle under its ownership or control which is used on any public road or street with the name of the operating department, agency, or institution (or the words "state motor pool" as appropriate) in letters at least one and one-quarter inches high of a color contrasting with the color of the vehicle. Immediately below such lettering and also in a contrasting color shall appear the official seal of the state of Washington, the size of which shall be not less than six inches in diameter. Immediately below the official seal, or insignia if authorized under subsection (3) of this section, shall appear the words "for official use only" in letters at least one inch high in a color contrasting with the color of the vehicle.~~

~~(3) The department of general administration, with the consent of the automotive policy board, may approve the use of a distinctive departmental, office, agency, institutional, or commission insignia in lieu of the state seal required under subsection (2) of this section. Such insignia, if approved, shall be in a color or colors contrasting with the vehicle to which applied and shall be not less than six inches in diameter or across its smallest dimension. The words "State of Washington" shall be included as part of or displayed above such approved insignia in a color contrasting with the vehicle in letters not less than one and one-quarter inches in height.~~

~~(4) Any distinctive departmental, office, agency, institutional, or commission insignia approved for marking of state vehicles by the state commission on equipment on or before January 1, 1975, shall be approved for continued use if it conforms to the standards imposed by subsections (2) and (3) of this section:~~

(5) Subsections (2) and (3)) Except as provided by subsections (3) and (4) of this section, passenger motor vehicles, as defined in section 2 of this act, owned or controlled by the state of Washington, and purchased after the effective date of this act, must be plainly and conspicuously marked on the lower left-hand corner of the rear window with the name of the operating agency or institution or the words "state motor pool," as appropriate, the words "state of Washington — for official use only," and the seal of the state of Washington or the appropriate agency or institution insignia, approved by the department of general administration. Markings must be on a transparent adhesive material and conform to the standards established by the department of general administration under section 3(1) of this act.

(3) Subsection (2) of this section shall not apply to vehicles used by the Washington state patrol for general undercover or confidential investigative purposes. Traffic control vehicles of the Washington state patrol may be exempted from the requirements of subsection((s)) (2) ~~((and (3)))~~ of this section at the discretion of the chief of the Washington state patrol. The department of general administration ~~((, with the consent of the automotive policy board, shall promulgate))~~ shall adopt general rules ~~((and regulations))~~ permitting other exceptions to the requirements of subsection((s)) (2) ~~((and (3)))~~ of this section for other vehicles used for law enforcement, confidential public health work, and public assistance fraud or support investigative purposes, for vehicles leased or rented by the state on a casual basis for a period of less than ninety days, and those provided for in RCW 46.08.066(3). The exceptions in this subsection, subsection (4) of this section, and those provided for in RCW 46.08.066(3) shall be the only exceptions permitted to the requirements of subsection((s)) (2) ~~((and (3)))~~ of this section.

~~((6))~~ (4) Any motorcycle, vehicle over 10,000 pounds gross vehicle weight, or other vehicle that for structural reasons cannot be marked as required by subsection (1) or (2) of this section that is owned or controlled by the state of Washington or by any county, city, town, or other public body in this state and used for public purposes on the public highways of this state shall be conspicuously marked in letters of a contrasting color with the words "State of Washington" or the name of such county, city, town, or other public body, together with the name of the department or office ~~((upon the business of which the motorcycle is used))~~ that owns or controls the vehicle.

~~((7))~~ (5) All motor vehicle markings required under the terms of this chapter shall be maintained in a legible condition at all times.

NEW SECTION. Sec. 10. Sections 1 through 5 of this act are each added to chapter 43.19 RCW.

NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House March 13, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 58

[Substitute House Bill No. 1503]

FERRIES—CONTRACTORS' BONDS—ALTERNATE FORMS OF SECURITY

AN ACT Relating to bonding requirements for construction, alteration, repair, or improvement of state ferries; amending RCW 39.08.030; adding a new section to chapter 39.08 RCW; and declaring an emergency.

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

Sec. 1. Section 3, chapter 207, Laws of 1909 as last amended by section 4, chapter 166, Laws of 1977 ex. sess. and RCW 39.08.030 are each amended to read as follows:

The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Washington, except as otherwise provided in (~~RCW 39.08.090~~) section 2 of this act, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of

..... (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

NEW SECTION. Sec. 2. A new section is added to chapter 39.08 RCW to read as follows:

On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation. The secretary of transportation shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel.

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

- Passed the House March 2, 1989.
- Passed the Senate April 5, 1989.
- Approved by the Governor April 19, 1989.
- Filed in Office of Secretary of State April 19, 1989.

CHAPTER 59

[Substitute House Bill No. 1379]

PUBLIC WORKS CONSTRUCTION CONTRACTS—BID PRICE ADJUSTMENT
NEGOTIATIONS

AN ACT Relating to bids on public construction contracts; and adding a new section to chapter 39.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 39.04 RCW to read as follows:

Notwithstanding the provisions of RCW 39.04.010, a state contracting authority is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract plans and specifications, with a low responsive bidder under the following conditions:

(1) All bids for a state public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;

(2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and

(3) The negotiated adjustment will bring the bid price within the amount of available funds.

Passed the House March 6, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 60

[House Bill No. 1282]

MOTOR CARRIER FREIGHT BROKERS AND FORWARDERS—DEFINITIONS
AND BONDING REQUIREMENTS

AN ACT Relating to the definition of motor carrier freight brokers and forwarders; and amending RCW 81.80.010 and 81.80.430.

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

Sec. 1. Section 81.80.010, chapter 14, Laws of 1961 as last amended by section 1, chapter 31, Laws of 1988 and RCW 81.80.010 are each amended to read as follows:

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

(1) "Person" means and 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 herein defined in paragraph (4) and paragraph (6), 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 own motor vehicle, with or without compensation therefor, property which is owned or is being bought or sold by such person, or property of which such person is the seller, purchaser, lessee, or bailee where such transportation is incidental to and in furtherance of some other primary business conducted by such person in good faith.

(7) "Motor carrier" means and includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as herein defined.

(8) "Exempt carrier" means any person operating a vehicle exempted from certain provisions of this chapter 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, excepting devices moved by human or animal power or used exclusively upon stationary rail or tracks.

(10) "Commercial zone" means an area encompassing one or more cities or towns and environs adjacent thereto established pursuant to RCW 81.80.400.

(11) "Terminal area" means an area including one or more cities or towns and environs adjacent thereto established pursuant to RCW 81.80.400.

(12) (~~"Broker" is a~~) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to ((arrange for)) provide transportation of property ((by two or

~~more interstate or intrastate common carriers))~~ for compensation over the public highways of the state of Washington as brokers or forwarders.

Sec. 2. Section 2, chapter 31, Laws of 1988 and RCW 81.80.430 are each amended to read as follows:

(1) Each broker or forwarder shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon such broker or forwarder making compensation to shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) It is unlawful for a broker or forwarder to conduct business as such in this state without first securing appropriate authority from the Interstate Commerce Commission, if such authority is required, and registering with the Washington utilities and transportation commission. The commission shall grant such registration without hearing, upon application and payment of the appropriate filing fee prescribed by this chapter for other applications for operating authority.

(3) Failure to file the bond or deposit the security is sufficient ~~((ground))~~ cause for refusal of the commission to grant the application for a permit or registration. Failure to ~~((promptly make the remittances provided for in this section and in rules of the commission))~~ maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration.

Passed the House February 24, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 61

[House Bill No. 1762]

REAL ESTATE TRANSACTIONS—DISCRIMINATION AGAINST PERSONS USING GUIDE OR SERVICE DOGS PROHIBITED

AN ACT Relating to discrimination in real estate transactions against physically disabled persons who use guide dogs; and amending RCW 49.60.222.

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

Sec. 1. Section 4, chapter 167, Laws of 1969 ex. sess. as last amended by section 8, chapter 127, Laws of 1979 and RCW 49.60.222 are each amended to read as follows:

It is an unfair practice for any person, whether acting for himself or another, because of sex, marital status, race, creed, color, national origin, the presence of any sensory, mental, or physical handicap, or the use of a

trained guide dog or service dog (~~(guide)~~) by a blind (~~(or)~~), deaf, or physically disabled person:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To expel a person from occupancy of real property;
- (9) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or
- (10) To attempt to do any of the unfair practices defined in this section.

Notwithstanding any other provision of law, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or family status.

This section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a handicapped person except as otherwise required by law. Nothing in this section affects the

rights and responsibilities of landlords and tenants pursuant to chapter 59-18 RCW.

Passed the House March 14, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 62

[House Bill No. 1330]

FERRIES—COUNTY OPERATED—RATES—STATE APPROVAL

AN ACT Relating to ferry operation; and amending RCW 47.04.140.

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

Sec. 1. Section 1, chapter 65, Laws of 1975-'76 2nd ex. sess. as amended by section 91, chapter 7, Laws of 1984 and RCW 47.04.140 are each amended to read as follows:

Whenever a county that operates or proposes to operate ferries obtains federal aid for the construction, reconstruction, or modification of any ferry boat or approaches thereto under Title 23, United States Code, the following provisions apply to the county's operation of its ferries:

(1) The county shall obtain from the department a franchise authorizing the ferry operations. The county's application for a franchise or amended franchise shall designate all ferry routes it proposes to operate. The department shall issue the franchise or amended franchise for the operation of each route that it finds is not otherwise served by adequate transportation facilities. A county may terminate any ferry route without approval of the department.

(2) At least ~~((thirty))~~ ninety days before applying for federal aid for the construction, reconstruction, or modification of any of its ferries or approaches thereto, and thereafter whenever new tolls or charges are proposed for use of its ferries, the county shall file with the department ~~((for its approval))~~, the current or proposed schedule of tolls and charges for use of its ferries. ~~((The department shall approve the schedule of tolls and charges))~~ Such tolls and charges shall be deemed approved by the department unless it finds that the aggregate revenues to be derived from the county's ferry operations will exceed the amount required to pay the actual and necessary costs of operation, maintenance, administration, and repair of the county's ferries and their appurtenances.

~~((3) The department shall adopt rules for the implementation of this section including provisions affording the right to a hearing to any county~~

~~before finally denying approval of any proposed ferry route or schedule of tolls and charges for use of the county's ferries:))~~

Passed the House February 24, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 63

[Substitute House Bill No. 1639]

FIRE PROTECTION DISTRICTS—FORMATION AND BOUNDARY CHANGES

AN ACT Relating to fire protection districts; amending RCW 52.02.030, 52.02.040, 52.02.050, 52.02.070, 52.02.080, 52.02.110, 52.04.011, 52.04.031, 52.04.051, 52.04.056, 52.06.010, 52.06.030, 52.06.060, 52.06.090, 52.06.100, 52.10.010, 52.14.015, 52.14.050, 52.14.060, 52.14.070, 52.16.010, 52.16.030, 52.16.040, 52.16.130, 52.18.010, 52.18.030, 52.18.040, 52.18.060, 52.20.025, and 52.22.011; adding a new section to chapter 52.02 RCW; adding a new section to chapter 52.04 RCW; adding a new section to chapter 52.06 RCW; adding a new section to chapter 52.30 RCW; and repealing RCW 52.02.090, 52.02.100, 52.02.120, 52.02.130, 52.06.040, 52.14.025, 52.14.040, and 52.30.010.

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

Sec. 1. Section 2, chapter 34, Laws of 1939 as last amended by section 2, chapter 230, Laws of 1984 and RCW 52.02.030 are each amended to read as follows:

(1) For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors who reside within the boundaries of the proposed district, and setting forth the object for the creation of the proposed district and alleging that the establishment of the proposed district will be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included in the proposed district, shall be filed with the county auditor of the county in which all, or the largest portion of, the proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice required by this title. The organization of any fire protection district previously formed is hereby approved and confirmed as a legally organized fire protection district in the state of Washington.

(2) The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency of the signatures. ~~((For this purpose, the county auditor shall have access to all registration books or records in the possession of the county election officials:))~~ If the proposed fire protection district is located in more than one county, the auditor of the county in which the largest portion of the proposed fire protection district is located shall be the lead auditor and

shall transmit a copy of the petition to the auditor or auditors of the other county or counties within which the proposed fire protection district is located. Each of these other auditors shall certify to the lead auditor both the total number of registered voters residing in that portion of the proposed fire protection district that is located in the county and the number of valid signatures of such voters who have signed the petition. The lead auditor shall certify the sufficiency or insufficiency of the signatures. The books and records of the auditor shall be prima facie evidence of the truth of the certificate. No person having signed the petition is allowed to withdraw his or her name after the filing of the petition with the county auditor.

(3) If the petition is found to contain a sufficient number of signatures of registered electors residing within the proposed district, the county auditor shall transmit the petition, together with the auditor's certificate of sufficiency, to the county legislative authority (~~which shall by resolution accept the petition and fix a time for a public hearing~~) or authorities of the county or counties in which the proposed fire protection district is located.

NEW SECTION. Sec. 2. A new section is added to chapter 52.02 RCW to read as follows:

The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency or insufficiency within five days of when the determination of sufficiency or insufficiency is made. Notice shall be by certified mail and additionally may be made by telephone. If a boundary review board exists in the county or counties in which the proposed fire protection district is located and the petition has been certified as being sufficient, the petitioners shall file notice of the proposed incorporation with the boundary review board or boards.

Sec. 3. Section 3, chapter 34, Laws of 1939 as amended by section 3, chapter 230, Laws of 1984 and RCW 52.02.040 are each amended to read as follows:

~~((The))~~ (1) A public hearing on the petition shall be ~~((at the office of))~~ held by the county legislative authority ~~((and))~~ of the county in which the proposed fire protection district is located if: (a) No boundary review board exists in the county; (b) jurisdiction by the boundary review board over the proposal has not been invoked; or (c) the boundary review board fails to take action on the proposal over which its jurisdiction has been invoked within the time period that the board must act or a proposal is deemed to have been approved. If such a public hearing is held by the county legislative authority, the hearing shall be held not less than twenty nor more than forty days from the date of receipt of the petition with the certificate of sufficiency from the county auditor if there is no boundary review board in the county, or not more than one hundred days from when the notice of the proposal was submitted to the boundary review board if the jurisdiction of the boundary review board was not invoked, or not less than forty days after

the date that the boundary review board that has had its jurisdiction invoked over the proposal must act if the proposal is deemed to have been approved. The hearing by the county legislative authority may be completed at the scheduled time or may be adjourned from time to time as may be necessary for a determination of the petition, but such adjournment or adjournments shall not extend the time for considering the petition more than ((sixty)) twenty days from the date of ((receipt of the petition by the county legislative authority)) the initial hearing on the petition.

(2) If the proposed fire protection district is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards, on the proposal.

Sec. 4. Section 4, chapter 34, Laws of 1939 as amended by section 4, chapter 230, Laws of 1984 and RCW 52.02.050 are each amended to read as follows:

((A copy of the petition with the names of the petitioners omitted, together with a notice signed by the clerk of the county legislative authority stating the date, hour, and place where the hearing on the petition shall take place;)) Notice of the public hearing by the county legislative authority on such a proposal shall be published for three consecutive weeks in the official paper of the county prior to the date set for the hearing((~~The clerk shall also post a copy of the petition with the names of the petitioners omitted, together with a copy of the notice attached;~~)) and shall be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district((~~to be previously designated by the clerk and made a matter of record in the proceedings on the petition~~)). The notices shall contain the time, date, and place of the public hearing.

Sec. 5. Section 6, chapter 34, Laws of 1939 as amended by section 6, chapter 230, Laws of 1984 and RCW 52.02.070 are each amended to read as follows:

The county legislative authority has the authority to consider the petition and, if it finds that the lands or any portion of the lands described in the petition, and any lands added thereto by petition of those interested, will be benefited and that the formation of the district will be conducive to the public safety, welfare, and convenience, it shall make a finding by resolution; otherwise it shall deny the petition. The county legislative authority shall consider only those areas located within the county when considering the petition. If the county legislative authority approves the petition, it shall designate the name and number of the district, fix the boundaries of the district that are located within the county, and direct that an election be held within the proposed district for the purpose of determining whether the district shall be organized under this title and for the purpose of the election

of its first fire commissioners. (~~The county legislative authority shall, prior to the calling of the election, name three resident electors of the proposed district as candidates for election as the first fire commissioners of the district.~~)

Where a proposed fire protection district is located in more than a single county, the fire protection district shall be identified by the name of each county in which the proposed fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. An election on a proposed fire protection district that is located in more than one county shall not be held unless the proposed district has been approved by the county legislative authorities, or boundary review boards, of each county within which the proposed district is located.

Sec. 6. Section 7, chapter 34, Laws of 1939 as amended by section 7, chapter 230, Laws of 1984 and RCW 52.02.080 are each amended to read as follows:

The election on the formation of the district and ((of the)) to elect the initial fire commissioners shall be conducted by the election officials of the county or counties in which the proposed district is located in accordance with the general election laws of the state. ((For the purpose of the election, county voting precincts may be combined or divided and redefined. The territory in the district shall be included in one or more election precincts as is convenient, and a polling place for each designated. The notice of the election shall state generally and briefly its purpose, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, list the names of the candidates for the first fire commissioners of the district, and shall state the date of the election.)) This election shall be held at the next general election date, as specified under RCW 29.13.020, that occurs forty-five or more days after the date of the action by the boundary review board, or county legislative authority or authorities, approving the proposal.

Sec. 7. Section 10, chapter 34, Laws of 1939 as last amended by section 10, chapter 230, Laws of 1984 and RCW 52.02.110 are each amended to read as follows:

If three-fifths of all the votes cast at the election were cast ((for the proposition "..... County Fire Protection District No. Yes,") in favor of the ballot proposition to create the proposed fire protection district, the county legislative authority of the county in which all, or the largest portion of, the proposed district is located shall by resolution declare the territory organized as a fire protection district under the name designated and shall declare the ((three-candidates-receiving)) candidate for each fire commissioner position who receives the highest number of votes

~~((for fire commissioners the elected))~~ for that position to be an initial fire commissioner((s)) of the district.

Sec. 8. Section 3, chapter 70, Laws of 1941 as last amended by section 22, chapter 230, Laws of 1984 and RCW 52.04.011 are each amended to read as follows:

(1) A territory contiguous to a fire protection district and not within the boundaries of a city, town, or other fire protection district may be annexed to the fire protection district ((for the purpose of obtaining fire suppression and prevention services and emergency medical services,)) by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such contiguous territory may be located in a county or counties other than the county or counties within which the fire protection district is located. The petition shall be filed with the fire commissioners of the fire protection district and if the fire commissioners concur in the petition they shall file the petition with the county auditor ((who shall)) of the county within which the territory is located. If this territory is located in more than one county, the original petition shall be filed with the auditor of the county within which the largest portion of the territory is located, who shall be designated as the lead auditor, and a copy shall be filed with the auditor of each other county within which such territory is located. Within thirty days after the date of the filing of the petition the auditor shall examine the signatures on the petition and certify to the sufficiency or insufficiency of the signatures. If this territory is located in more than one county, the auditor of each other county who receives a copy of the petition shall examine the signatures and certify to the lead auditor the number of valid signatures and the number of registered voters residing in that portion of the territory that is located within the county. The lead auditor shall certify the sufficiency or insufficiency of the signatures.

After the county auditor has certified the sufficiency of the petition, the ((proceedings by the county legislative authority and the rights, powers, and duties of the county legislative authority, petitioners, and objectors, and the election and canvass of the election results shall be the same as in the original proceedings to form a fire protection district. PROVIDED, That)) county legislative authority or authorities, or the boundary review board or boards, of the county or counties in which such territory is located shall consider the proposal under the same basis that a proposed incorporation of a fire protection district is considered, with the same authority to act on the proposal as in a proposed incorporation, as provided under chapter 52.02 RCW. If the proposed annexation is approved by the county legislative authority or boundary review board, the board of fire commissioners shall adopt a resolution requesting the county auditor to call a special election, as specified under RCW 29.13.020, at which the ballot proposition is to be

submitted. No annexation shall occur when the territory proposed to be annexed is located in more than one county unless the county legislative authority or boundary review board of each county approves the proposed annexation.

(2) The county legislative authority ((has)) or authorities of the county or counties within which such territory is located have the authority and duty to determine on an equitable basis, the amount of any obligation which the territory to be annexed to the district shall assume to place the property owners of the existing district on a fair and equitable relationship with the property owners of the territory to be annexed as a result of the benefits of annexing to a district previously supported by the property owners of the existing district. If a boundary review board has had its jurisdiction invoked on the proposal and approves the proposal, the county legislative authority of the county within which such territory is located may exercise the authority granted in this subsection and require such an assumption of indebtedness. This obligation may be paid to the district in yearly benefit charge installments to be fixed by the county legislative authority. This benefit charge shall be collected with the annual tax levies against the property in the annexed territory until fully paid. The amount of the obligation and the plan of payment established by the county legislative authority shall be described in general terms in the notice of election for annexation and shall be described in the ballot proposition on the proposed annexation that is presented to the voters for their approval or rejection. Such benefit charge shall be limited to an amount not to exceed a total of fifty cents per thousand dollars of assessed valuation: PROVIDED, HOWEVER, That the special election on the proposed annexation shall be held only within the boundaries of the territory proposed to be annexed to the fire protection district.

(3) On the entry of the order of the county legislative authority incorporating the territory into the existing fire protection district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district. If the petition is signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and if the board of fire commissioners concur, an election in the territory and a hearing on the petition shall be dispensed with and the county legislative authority shall enter its order incorporating the territory into the existing fire protection district.

Sec. 9. Section 2, chapter 59, Laws of 1965 as amended by section 24, chapter 230, Laws of 1984 and RCW 52.04.031 are each amended to read as follows:

A petition for annexation of an area contiguous to a fire district shall be in writing, addressed to and filed with the board of fire commissioners of the district to which annexation is desired. Such contiguous territory may be located in a county or counties other than the county or counties within

which the fire protection district is located. It must be signed by the owners, according to the records of the county auditor or auditors, of not less than sixty percent of the area of land included in the annexation petition, shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property to be annexed. The petition shall state the financial obligation, if any, to be assumed by the area to be annexed.

Sec. 10. Section 4, chapter 59, Laws of 1965 as amended by section 26, chapter 230, Laws of 1984 and RCW 52.04.051 are each amended to read as follows:

After the hearing, the board of fire commissioners shall determine by resolution whether the area shall be annexed. It may annex all or any portion of the proposed area but may not include in the annexation property not described in the petition. The proposed annexation shall be subject to action by the county legislative authority, as provided under RCW 52.04.011, to the same extent as if the annexation were done under the election method of annexation. If the area proposed to be annexed under this procedure is reduced, the annexation shall occur only if the owners of not less than sixty percent of the remaining area have signed the petition. After adoption of the resolution a copy shall be filed with the county legislative authority or authorities within which the territory is located.

Sec. 11. Section 3, chapter 138, Laws of 1987 and RCW 52.04.056 are each amended to read as follows:

(1) As provided in this section, a fire protection district may withdraw areas from its boundaries, or reannex areas into the fire protection district that previously had been withdrawn from the fire protection district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the board of fire commissioners requesting the withdrawal and finding that, in the opinion of the board, inclusion of this area within the fire protection district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The authority of an area to be withdrawn from a fire protection district as provided under this section is in addition, and not subject, to the provisions of RCW 52.04.101.

The withdrawal of an area from the boundaries of a fire protection district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the fire protection district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a fire protection district under this section may be reannexed into the fire protection district upon: (a) Adoption of a resolution by the board of fire commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority or authorities, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in RCW 29.13-.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation.

NEW SECTION. Sec. 12. A new section is added to chapter 52.04 RCW to read as follows:

Any fire protection district located in a single county that annexes territory in another county shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts.

Sec. 13. Section 12, chapter 254, Laws of 1947 as amended by section 57, chapter 230, Laws of 1984 and RCW 52.06.010 are each amended to read as follows:

A fire protection district may merge with another adjacent fire protection district, on such terms and conditions as they agree upon, in the manner provided in this title. The fire protection districts may be located in different counties. The district desiring to merge with another district, or the district from which it is proposed that a portion of the district be merged with another district, shall be called the "merging district(," and))." The district into which the merger is to be made shall be called the "merger district." The merger of any districts under chapter 52.06 RCW is subject to potential review by the boundary review board or boards of the county in which the merging district, or the portion of the merging district that is proposed to be merged with another district, is located.

Sec. 14. Section 14, chapter 254, Laws of 1947 as amended by section 59, chapter 230, Laws of 1984 and RCW 52.06.030 are each amended to read as follows:

The board of the merger district may, by resolution, reject or approve the petition as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution to the merging district.

If the petition is approved as presented or as modified, the board of the merging district shall send an elector-signed petition, if there is one, to the auditor or auditors of the county or counties in which the merging district is ((situated)) located, who shall within thirty days examine the signatures and certify to the sufficiency or insufficiency of the signatures ((, and for that purpose shall have access to all registration books and records)). If the merging district is located in more than one county, the auditor of the county within which the largest portion of the merging district is located shall be the lead auditor. Each other auditor shall certify to the lead auditor the number of valid signatures and the number of registered voters of the merging district who reside in the county. The lead auditor shall certify as to the sufficiency or insufficiency of the signatures. No signatures may be withdrawn from the petition after the filing. A certificate of sufficiency shall be provided to the board of the merging district, which shall adopt a resolution requesting the county auditor or auditors to call a special election, as provided in RCW 29.13.020, for the purpose of presenting the question of merging the districts to the voters of the merging district.

If there is no elector-signed petition, the merging district board shall adopt a resolution ((calling)) requesting the county auditor or auditors to call a special election in the merging district, as specified under RCW 29.13.020, for the purpose of presenting the question of the merger to the electors.

Sec. 15. Section 17, chapter 254, Laws of 1947 as amended by section 61, chapter 230, Laws of 1984 and RCW 52.06.060 are each amended to read as follows:

If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary and the auditor, or lead auditor if the merging district is located in more than a single county, shall return the petition, together with a certificate of sufficiency to the board of the merging district. The boards of the respective districts shall then adopt resolutions declaring the districts merged in the same manner and to the same effect as if the merger had been authorized by an election.

Sec. 16. Section 5, chapter 176, Laws of 1953 as last amended by section 64, chapter 230, Laws of 1984 and RCW 52.06.090 are each amended to read as follows:

A part of one district may be transferred and merged with an adjacent district if the area can be better served by the merged district. To effect such a merger, a petition, signed by a majority of the commissioners of the merging district or signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district, if signed by electors, or with the commissioners of the merger district if signed by commissioners of the merging district. If the commissioners of the merging district approve the petition, the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district approve the petition, an election shall be called in the area to be merged.

In the event that either board of fire district commissioners does not approve the petition, the petition may ~~((then be presented to a county review board established for such purposes. If there is no county review board for such purposes then the petition shall be presented to the legislative body))~~ be approved by the boundary review board of the county or the county legislative authority of the county in which the area to be merged is situated, ((which shall decide if)) and may approve the merger if it decides the area can be better served by a merger. If the part of the merging district that is proposed to merge with the merger district is located in more than one county, the approval must be by the boundary review board or county legislative authority of each county. If there is an affirmative decision, an election shall be called in the area to be merged.

A majority of the votes cast is necessary to approve the transfer.

Sec. 17. Section 6, chapter 176, Laws of 1953 as amended by section 65, chapter 230, Laws of 1984 and RCW 52.06.100 are each amended to read as follows:

If three-fifths of the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor or lead auditor shall return the petition, together with a certificate of sufficiency, to the board of the merger district. The board of the merger district shall then adopt a resolution declaring the

portion of the district merged in the same manner and to the same effect as if the same had been authorized by an election.

NEW SECTION. Sec. 18. A new section is added to chapter 52.06 RCW to read as follows:

A merger fire protection district located in a single county, that merged with a merging fire protection district located in another county or counties, shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts.

Sec. 19. Section 46, chapter 34, Laws of 1939 as amended by section 15, chapter 230, Laws of 1984 and RCW 52.10.010 are each amended to read as follows:

Fire protection districts may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board of commissioners of the district calling for the dissolution. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. When the obligations are fully paid, all moneys in district funds and all collections of unpaid district taxes shall be transferred to the expense fund of the county. Where the fire protection district that was dissolved was located in more than one county, the amount of money transferred to the expense fund of each county shall be in direct proportion to the amount of assessed valuation of the fire protection district that was located in each county at the time of its dissolution.

Sec. 20. Section 85, chapter 230, Laws of 1984 and RCW 52.14.015 are each amended to read as follows:

In the event a three member board of commissioners of any fire protection district determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by fifteen percent of the qualified electors resident within the district calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative ((body)) authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon

receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of _____ county fire protection district no. _____ be increased from three members to five members?

Yes _____

No _____

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be increased to five members. The two additional members shall be appointed in the same manner as provided in RCW 52.14.020.

Sec. 21. Section 26, chapter 34, Laws of 1939 as last amended by section 2, chapter 238, Laws of 1984 and RCW 52.14.050 are each amended to read as follows:

In the event of a vacancy occurring in the office of fire commissioner, the vacancy shall, within sixty days, be filled by appointment of a resident elector of the district by a vote of the remaining fire commissioners. ~~((The person appointed shall serve until a successor has been elected or appointed and has qualified:))~~ If the board of commissioners fails to fill the vacancy within the sixty-day period, the county legislative authority of the county in which all, or the largest portion, of the district is located shall make the appointment. If the number of vacancies is such that there ~~((are))~~ is not a majority of the full number of commissioners in office as fixed by law, the county legislative authority ~~((shall within thirty days of the vacancies appoint the required number))~~ of the county in which all, or the largest portion, of the district is located shall appoint someone to fill each vacancy, within thirty days of each vacancy, that is sufficient to create a majority as prescribed by law ((to fill the vacancies)).

An appointee shall serve ad interim ((through)) until a successor has been elected and qualified at the next general election as provided in chapter 29.21 RCW. ((At the next general election, if there is sufficient time for the nomination of candidates for office of fire commissioner, after the filling of any vacancy in the office, a fire commissioner shall be elected to)) A person who is so elected shall take office immediately after he or she is qualified and shall serve for the remainder of the unexpired term.

If a fire commissioner is absent from the district for three consecutive regularly scheduled meetings unless by permission of the board, the office shall be declared vacant by the board of commissioners and the vacancy shall be filled as provided for in this section. However, such an action shall

not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. Vacancies additionally shall occur as provided in chapter 42.12 RCW.

Sec. 22. Section 27, chapter 34, Laws of 1939 as last amended by section 33, chapter 230, Laws of 1984 and RCW 52.14.060 are each amended to read as follows:

~~((At the time of the first general election occurring thirty or more days after the creation of a district;))~~ The initial three members of the board of fire commissioners shall be elected at the same election as when the ballot proposition is submitted to the voters authorizing the creation of the fire protection district. If the district is not authorized to be created, the election of the initial fire commissioners shall be null and void. If the district is authorized to be created, the initial fire commissioners shall take office immediately when qualified. Candidates shall file for each of the three separate fire commissioner positions. Elections shall be held as provided in chapter 29.21 RCW, with the county auditor opening up a special filing period as provided in RCW 29.21.360 and 29.21.370, as if there were a vacancy. The candidate for each position who receives the greatest number of votes shall be elected to that position. If the election is held in an odd-numbered year, the winning candidate receiving the highest number of votes shall ~~((serve))~~ hold office for a term of six years ~~((beginning in accordance with RCW 29.04.170)),~~ the winning candidate receiving the next highest number of votes shall ~~((serve))~~ hold office for a term of four years, and the candidate receiving the next highest number of votes shall serve for a term of two years. ~~((It is the intent of the law that the term of a fire commissioner shall expire biennially and that this relationship be preserved as far as legally possible;))~~ If the election were held in an even-numbered year, the winning candidate receiving the greatest number of votes shall hold office for a term of five years, the winning candidate receiving the next highest number of votes shall hold office for a term of three years, and the winning candidate receiving the next highest number of votes shall hold office for a term of one year. The terms of office of the initially elected fire commissioners shall be calculated from the first day of January in the year following their election.

Sec. 23. Section 29, chapter 34, Laws of 1939 as last amended by section 22, chapter 167, Laws of 1986 and RCW 52.14.070 are each amended to read as follows:

Before beginning the duties of office, each fire commissioner shall take and subscribe the official oath for the faithful discharge of the duties of office as required by RCW 29.01.135, which oath shall be filed in the office of the auditor of the county in which all, or the largest portion of, the district is ~~((situated))~~ located.

Sec. 24. Section 33, chapter 34, Laws of 1939 as amended by section 38, chapter 230, Laws of 1984 and RCW 52.16.010 are each amended to read as follows:

It is the duty of the county treasurer of the county in which all, or the largest portion of, any fire protection district created under this title is ((situated)) located to receive and disburse district revenues, to collect taxes and assessments authorized and levied under this title, and to credit district revenues to the proper fund. However, were a fire protection district is located in more than one county, the county treasurer of each other county in which the district is located shall collect the fire protection district's taxes and assessments that are imposed on property located within the county and transfer these funds to the county treasurer of the county in which the largest portion of the district is located.

Sec. 25. Section 35, chapter 34, Laws of 1939 as amended by section 40, chapter 230, Laws of 1984 and RCW 52.16.030 are each amended to read as follows:

Annually after the county board or boards of equalization ((has)) of the county or counties in which the district is located have equalized the assessments for general tax purposes in that year, the secretary of the district shall prepare and certify a budget of the requirements of each district fund, and deliver it to the county legislative authority or authorities of the county or counties in which the district is located in ample time for ((it to make)) the tax levies to be made for district purposes.

Sec. 26. Section 36, chapter 34, Laws of 1939 as amended by section 41, chapter 230, Laws of 1984 and RCW 52.16.040 are each amended to read as follows:

At the time of making general tax levies in each year the county legislative authority or authorities of the county or counties in which a fire protection district is located shall make the required levies for district purposes against the real and personal property in the district in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district.

Sec. 27. Section 8, chapter 24, Laws of 1951 2nd ex. sess. as last amended by section 121, chapter 7, Laws of 1985 and RCW 52.16.130 are each amended to read as follows:

To carry out the purposes for which fire protection districts are created, the board of fire commissioners of a district may levy each year, in addition to the levy or levies provided in RCW 52.16.080 for the payment of the principal and interest of any outstanding general obligation bonds, an ad valorem tax on all taxable property located in the district not to exceed fifty cents per thousand dollars of assessed value: PROVIDED, That in no

case may the total general levy for all purposes, except the levy for the retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed value or in excess of the aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied shall be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate district fund or funds as provided by law, and shall be paid out on warrants of the auditor of the county in which all, or the largest portion of, the district is ((situated)) located, upon authorization of the board of fire commissioners of the district.

Sec. 28. Section 1, chapter 126, Laws of 1974 ex. sess. as last amended by section 1, chapter 325, Laws of 1987 and RCW 52.18.010 are each amended to read as follows:

The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a service charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: PROVIDED, That a service charge shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of such service charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the service charge is to be collected: PROVIDED, That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

A service charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the service charge to the values of the properties as found by the county assessor or assessors modified generally in

the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the service charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district: PROVIDED, That a service charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement.

Sec. 29. Section 3, chapter 126, Laws of 1974 ex. sess. as last amended by section 3, chapter 325, Laws of 1987 and RCW 52.18.030 are each amended to read as follows:

The resolution establishing service charges as specified in RCW 52.18-.010 shall specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the service charge to be charged to each property owner subject to the resolution. The county assessor of each county in which the district is located shall determine and identify the personal properties and improvements to real property which are subject to a service charge in each fire protection district and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of service charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the service charge to apply to each. These service charges shall be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04-.610 and the same penalties and provisions for collection shall apply.

Sec. 30. Section 4, chapter 126, Laws of 1974 ex. sess. as amended by section 4, chapter 325, Laws of 1987 and RCW 52.18.040 are each amended to read as follows:

Each fire protection district shall contract, prior to the effective date of a resolution imposing a service charge, for the administration and collection of the service charge by ~~((the))~~ each county treasurer, who shall deduct a

percent, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the service charges imposed on behalf of each district, less the deduction provided for in the contract.

Sec. 31. Section 6, chapter 126, Laws of 1974 ex. sess. as amended by section 6, chapter 325, Laws of 1987 and RCW 52.18.060 are each amended to read as follows:

(1) Not less than ten days nor more than six months before the election at which the proposition to impose the service charge is submitted as provided in this chapter, the board of fire commissioners of the district shall hold a public hearing specifically setting forth its proposal to impose service charges for the support of its legally authorized activities which will maintain or improve the services afforded in the district. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to October 15 of each year the board of fire commissioners shall hold a public hearing to review and establish the fire district service charges for the subsequent year.

All resolutions imposing or changing the service charges shall be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before October 31 immediately preceding the year in which the service charges are to be collected on behalf of the district.

Sec. 32. Section 3, chapter 161, Laws of 1961 as last amended by section 50, chapter 230, Laws of 1984 and RCW 52.20.025 are each amended to read as follows:

The hearing and all subsequent proceedings in connection with the local improvement, including but not limited to the levying, collection, and enforcement of local improvement assessments, and the authorization, issuance, and payment of local improvement bonds and warrants shall be in accordance with the provisions of law applicable to cities and towns set forth in chapters 35.43, 35.44, 35.45, 35.49, 35.50, and 35.53 RCW. Fire protection districts may exercise the powers set forth in those chapters: PROVIDED, That no local improvement guaranty fund may be created: PROVIDED FURTHER, That for the purposes of RCW 52.16.070, 52.20.010, 52.20.020, and 52.20.025, with respect to the powers granted and the duties imposed in chapters 35.43, 35.44, 35.45, 35.50, and 35.53 RCW:

(1) The words "city or town" mean fire protection district.

(2) The secretary of a fire protection district shall perform the duties of the "clerk" or "city or town clerk."

(3) The board of fire commissioners of a fire protection district shall perform the duties of the "council" or "city or town council" or "legislative authority of a city or town."

(4) The board of fire commissioners of a fire protection district shall perform the duties of the "mayor."

(5) The word "ordinance" means a resolution of the board of fire commissioners of a fire protection district.

(6) The treasurer or treasurers of the county or counties in which a fire protection district is ~~((situated))~~ located shall perform the duties of the "treasurer" or "city or town treasurer."

Sec. 33. Section 1, chapter 230, Laws of 1947 as amended by section 66, chapter 230, Laws of 1984 and RCW 52.22.011 are each amended to read as follows:

The respective areas, organized and established or attempted to be organized and established under the authority granted in (~~chapter 34, Laws of 1939, as amended;~~) Title 52 RCW which since their organization and establishment or attempted organization and establishment have continuously maintained their organization as fire protection districts established under the authority of these statutes are declared to be properly organized fire protection districts existing under and by virtue of the statutes having in each case, the boundaries set forth in the respective organization proceedings of each of them as shown by the files and records in the offices of the legislative authority or authorities and auditor or auditors of the county or counties in which the particular area lies.

NEW SECTION. Sec. 34. A new section is added to chapter 52.30 RCW to read as follows:

The name of a fire protection district shall be changed, as proposed by resolution of the board of fire commissioners of the district, upon the adoption of a resolution approving the change by the county legislative authority of the county in which all, or the largest portion, of a fire protection district is located.

NEW SECTION. Sec. 35. The following acts or parts of acts are each repealed:

(1) Section 8, chapter 34, Laws of 1939, section 8, chapter 230, Laws of 1984 and RCW 52.02.090;

(2) Section 9, chapter 34, Laws of 1939, section 9, chapter 230, Laws of 1984 and RCW 52.02.100;

(3) Section 11, chapter 34, Laws of 1939, section 11, chapter 230, Laws of 1984 and RCW 52.02.120;

(4) Section 12, chapter 34, Laws of 1939, section 4, chapter 254, Laws of 1947, section 12, chapter 230, Laws of 1984 and RCW 52.02.130;

(5) Section 15, chapter 254, Laws of 1947, section 60, chapter 230, Laws of 1984 and RCW 52.06.040;

(6) Section 23, chapter 34, Laws of 1939, section 32, chapter 126, Laws of 1979 ex. sess., section 30, chapter 230, Laws of 1984 and RCW 52.14.025;

(7) Section 25, chapter 34, Laws of 1939, section 7, chapter 254, Laws of 1947, section 1, chapter 101, Laws of 1972 ex. sess., section 32, chapter 230, Laws of 1984 and RCW 52.14.040; and

(8) Section 28, chapter 34, Laws of 1939, section 76, chapter 230, Laws of 1984 and RCW 52.30.010.

Passed the House March 6, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 64

[Substitute House Bill No. 1651]
FLOOD PLAIN MANAGEMENT

AN ACT Relating to flood plains; amending RCW 86.16.020, 86.16.025, 86.16.031, 86.16.041, and 86.16.061; and adding a new section to chapter 86.16 RCW.

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

Sec. 1. Section 3, chapter 159, Laws of 1935 as amended by section 2, chapter 523, Laws of 1987 and RCW 86.16.020 are each amended to read as follows:

State-wide flood plain management regulation shall be exercised through: (1) Local governments' administration of the national flood insurance program regulation requirements, (2) the establishment of minimum state requirements for flood plain management that equal the minimum federal requirements for the national flood insurance program, and (3) ~~((the administration of flood plain management programs for local jurisdictions not participating in or meeting the requirements of the national flood insurance program, and (4) through))~~ the issuance of regulatory orders. This regulation shall be exercised over the planning, construction, operation and maintenance of any works, structures and improvements, private or public, which might, if improperly planned, constructed, operated and maintained, adversely influence the regimen of a stream or body of water or might adversely affect the security of life, health and property against damage by flood water.

Sec. 2. Section 6, chapter 159, Laws of 1935 as last amended by section 50, chapter 109, Laws of 1987 and RCW 86.16.025 are each amended to read as follows:

With respect to such features as may affect flood conditions, the department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or

to be reconstructed or modified upon the banks or in or over the channel or over and across the ~~((flood plain or))~~ floodway of any stream or body of water in this state.

Sec. 3. Section 3, chapter 523, Laws of 1987 and RCW 86.16.031 are each amended to read as follows:

The department of ecology shall:

(1) Review and approve ~~((all))~~ county, city, or town flood plain management ordinances pursuant to RCW 86.16.041;

(2) When requested, provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;

(3) Provide technical assistance to local governments in the administration of their flood plain management ordinances;

(4) Provide local governments and the general public with information related to the national flood insurance program;

(5) When requested, provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements;

(6) ~~((Assume regulatory authority for flood plain management activities in the event of failure by the local government to comply with the requirements of this chapter; and~~

~~(7))~~ Establish minimum state requirements that equal ~~((or exceed the))~~ minimum federal requirements for the national flood insurance program;

(7) Assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate; and

(8) Establish minimum state requirements for specific flood plains that exceed the minimum federal requirements for the national flood insurance program, but only if: (a) The location of the one hundred year flood plain has been reexamined and is certified by the department as being accurate; (b) negotiations have been held with the affected county, city, or town over these regulations; (c) public input from the affected community has been obtained; and (d) the department makes a finding that these increased requirements are necessary due to local circumstances and general public safety.

Sec. 4. Section 4, chapter 523, Laws of 1987 and RCW 86.16.041 are each amended to read as follows:

(1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new flood plain management ordinance or amendment to any existing flood plain management

ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction of residential structures except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty percent determination;

~~(b) ((Floodproofing or elevating lowest floor levels for nonresidential structures;~~

~~(c) Elevating lowest floor levels for residential structures;~~

~~(d)) The minimum requirements of the national flood insurance program; ((or~~

~~(e) Any minimum state requirements established by rule by the department of ecology)) and~~

(c) The minimum state requirements adopted pursuant to RCW 86.16.031(8) that are applicable to the particular county, city, or town.

Sec. 5. Section 6, chapter 523, Laws of 1987 and RCW 86.16.061 are each amended to read as follows:

The department of ecology ~~((may))~~ after consultation with the public shall adopt such rules as are necessary to implement this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 86.16 RCW to read as follows:

A county, city, or town may adopt flood plain management ordinances or requirements that exceed the minimum federal requirements of the national flood insurance program without following the procedures provided in RCW 86.16.031(8).

Passed the House March 14, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 65

[House Bill No. 2158]

HEALTH CARE FACILITIES—COMPREHENSIVE CANCER CENTERS INCLUDED
IN DEFINITION

AN ACT Relating to comprehensive cancer centers; and amending RCW 70.37.020.

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

Sec. 1. Section 2, chapter 147, Laws of 1974 ex. sess. as amended by section 3, chapter 210, Laws of 1983 and RCW 70.37.020 are each amended to read as follows:

As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated by the director of the department of licensing pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used,

owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof.

Passed the House March 14, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 66

[Senate Bill No. 5617]

TEACHERS—SCIENCE AND MATHEMATICS—CAREER OPPORTUNITIES FOR WOMEN AND MINORITIES

AN ACT Relating to the mathematics, engineering, and science achievement program; and amending RCW 28A.03.430 and 28A.03.432.

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

Sec. 1. Section 1, chapter 265, Laws of 1984 and RCW 28A.03.430 are each amended to read as follows:

The legislature finds that high technology is important to the state's economy and the welfare of its citizens. The legislature finds that certain groups, as characterized by sex or ethnic background, are traditionally underrepresented in mathematics, engineering, and the science-related professions in this state. The legislature finds that women and minority students have been traditionally discouraged from entering the fields of science and mathematics including teaching in these fields. The legislature finds that attitudes and knowledges acquired during the kindergarten through eighth grade prepare students to succeed in high school science and mathematics programs and that special skills necessary for these fields need to be acquired during the ninth through twelfth grades. It is the intent of the legislature to promote a mathematics, engineering, and science achievement program to help increase the number of people in these fields and teaching in these fields from groups underrepresented in these fields.

Sec. 2. Section 2, chapter 265, Laws of 1984 and RCW 28A.03.432 are each amended to read as follows:

A program to increase the number of people from groups underrepresented in the fields of mathematics, engineering, and the physical sciences in this state shall be established by the University of Washington. The program shall be administered through the University of Washington and designed to:

(1) Encourage students in the targeted groups in the common schools, with a particular emphasis on those students in the ninth through twelfth grades, to acquire the academic skills needed to study mathematics, engineering, or related sciences at an institution of higher education;

(2) Promote the awareness of career opportunities including the career opportunities of teaching in the fields of science and mathematics and the skills necessary to achieve those opportunities among students sufficiently early in their educational careers to permit and encourage the students to acquire the skills;

(3) Promote cooperation among institutions of higher education, the superintendent of public instruction and local school districts in working towards the goals of the program; and

(4) Solicit contributions of time and resources from public and private institutions of higher education, high schools, and private business and industry.

Passed the Senate March 15, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 67

[Substitute Senate Bill No. 5838]
LIVESTOCK LIENS

AN ACT Relating to agricultural livestock liens; amending RCW 60.56.010; and adding a new section to chapter 60.56 RCW.

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

Sec. 1. Section 1, chapter 176, Laws of 1909 as amended by section 1, chapter 233, Laws of 1987 and RCW 60.56.010 are each amended to read as follows:

Any farmer, ranchman, herder of cattle, (~~tavern-keeper;~~) livery and boarding stable keeper, veterinarian, or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid.

NEW SECTION. Sec. 2. A new section is added to chapter 60.56 RCW to read as follows:

If a person who holds a lien under RCW 60.56.010 provides, prior to the purchase or sale, written notice of the lien to buyers, or to persons selling on a commission basis for the animals' owners then the lien holder has perfected the lien. The lien holder is entitled to collect from the buyer, the

seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder.

Passed the Senate March 7, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 68

[House Bill No. 1689]

LICENSING FEES—REFUND OF OVERPAYMENTS

AN ACT Relating to refund of licensing fees; amending RCW 46.68.010, 82.44.120, and 82.50.170; adding a new section to chapter 82.49 RCW; adding a new section to chapter 88.02 RCW; and prescribing penalties.

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

Sec. 1. Section 46.68.010, chapter 12, Laws of 1961 as last amended by section 1, chapter 120, Laws of 1979 and RCW 46.68.010 are each amended to read as follows:

Whenever any license fee, paid under the provisions of this title, has been erroneously paid, wholly or in part, the person paying the fee, upon satisfactory proof to the director of licensing, shall be entitled to have refunded the amount so erroneously paid. A renewal license fee paid prior to the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vehicle for which the renewal license is being purchased is destroyed or permanently removed from the state prior to the beginning date of the registration period for which the renewal fee is being paid. Upon such refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto: PROVIDED, That no claim for refund shall be allowed for such erroneous payments unless filed with the director within thirteen months after such claimed erroneous payment was made.

If due to error a person has been required to pay a vehicle license fee under this title and an excise tax which amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 2. Section 82.44.120, chapter 15, Laws of 1961 as last amended by section 3, chapter 26, Laws of 1983 and RCW 82.44.120 are each amended to read as follows:

Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then he shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected and the state treasurer shall determine the amount of such refund by reference to the applicable excise tax schedule prepared by the department of revenue in cooperation with the department of licensing.

In case no claim is to be made for the refund of the license fee or any part thereof but claim is made by any person that he has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ~~((five))~~ ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to ~~((charge and))~~ collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ~~((five))~~ ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds and the other refunds herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section~~((:))~~ is guilty of a gross misdemeanor.

NEW SECTION. Sec. 3. A new section is added to chapter 82.49 RCW to read as follows:

Whenever any person has paid a vessel license fee, and with the fee has paid an excise tax imposed under this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the

license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under this chapter. If the director determines that any person is entitled to a refund of only a part of the license fee paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected. The state treasurer shall determine the amount of such refund by reference to the applicable excise tax schedule prepared by the department of revenue in cooperation with the department of licensing.

If no claim is to be made for the refund of the license fee, or any part of the fee, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that the person is entitled to a refund in that amount.

If due to error a person has been required to pay an excise tax pursuant to this chapter and a license fee under chapter 88.02 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

If the department approves the claim, it shall notify the state treasurer to that effect and the treasurer shall make such approved refunds and the other refunds provided for in this section from the general fund and shall mail or deliver the same to the person entitled to the refund.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 4. Section 16, chapter 260, Laws of 1981 and RCW 82.50.170 are each amended to read as follows:

In case a claim is made by any person that he has erroneously paid the tax or a part thereof or any charge hereunder, he may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department. The department shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount, and the treasurer shall make such approved refund herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

Any person making any false statement in the affidavit herein mentioned, under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section, shall be guilty of a gross misdemeanor.

NEW SECTION. Sec. 5. A new section is added to chapter 88.02 RCW to read as follows:

Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid. A renewal license fee paid before the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vessel for which the renewal license is being purchased is destroyed or permanently removed from the state before the beginning date of the registration period for which the renewal fee is being paid. Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund. A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within thirteen months after such payment was made.

If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Passed the House March 6, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 69

[Substitute Senate Bill No. 6003]

SCHOOL EMPLOYEES—POST-RETIREMENT MEDICAL BENEFITS FOR UNUSED SICK LEAVE

AN ACT Relating to school and educational service districts' employee attendance incentive programs; and amending RCW 28A.21.360 and 28A.58.096.

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

Sec. 1. Section 6, chapter 182, Laws of 1980 as amended by section 9, chapter 341, Laws of 1985 and RCW 28A.21.360 are each amended to read as follows:

Every educational service district board of directors shall establish an attendance incentive program for all certificated and noncertificated employees in the following manner. In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation (~~(-PROVIDED, That))~~). No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

At the time of separation from educational service district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury or, in lieu of monetary compensation and with equivalent funds, a school district board of directors may provide eligible employees postretirement medical benefits.

Moneys or postretirement medical benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Sec. 2. Section 2, chapter 275, Laws of 1983 and RCW 28A.58.096 are each amended to read as follows:

Every school district board of directors may, in accordance with chapters 41.56 and 41.59 RCW, establish an attendance incentive program for all certificated and noncertificated employees in the following manner, including covering persons who were employed during the 1982-'83 school year: (1) In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation(~~(: PROVIDED, That)~~). No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

(2) At the time of separation from school district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury.

(3) In lieu of remuneration for unused leave for illness or injury as provided in subsection (2) of this section, a school district board of directors may, with equivalent funds, provide eligible employees postretirement medical benefits.

Moneys or postretirement medical benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Passed the Senate March 14, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 70

[House Bill No. 1418]

MORAL NUISANCES—INJUNCTIONS AGAINST

AN ACT Relating to moral nuisances; adding new sections to chapter 7.48A RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that actions against moral nuisances as declared in RCW 7.48A.020 (1) through (4) involve balancing the safeguards necessary to protect constitutionally protected speech and the community and law enforcement efforts to curb dissemination of obscene matters. The legislature finds that the difficulty in ascertaining and obtaining originals and copies of obscene matters for evidentiary purposes thwarts legitimate enforcement efforts. The legislature finds that the balancing of the concerns warrants specific discovery procedures applicable to actions against moral nuisances involving obscene matters.

NEW SECTION. Sec. 2. After the plaintiff files a civil action under this chapter, the plaintiff may apply to the superior court in which the plaintiff filed the action for a temporary or preliminary injunction. The court shall grant a hearing within ten days after the plaintiff applies for a temporary injunction.

NEW SECTION. Sec. 3. After the plaintiff applies for a temporary or preliminary injunction, the court may, upon a showing of good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist, until the court grants or denies the plaintiff's application for a temporary or preliminary injunction or until further order of the court. However, pending the court's decision on the injunction, the temporary restraining order shall not restrain the exhibition or sale of any film, publication or item of stock in trade. The order may require that at least one original of each film or publication shall be preserved pending the hearing on the injunction. The court may require an inventory and full accounting of all business transactions.

The officer serving the restraining order or preliminary injunction may serve the order by handing to and leaving a copy with any person in charge of the place or residing in the place, or by posting a copy in a conspicuous place at or upon one or more of the principal doors or entrances to the place, or by both delivery and posting. The officer serving the restraining order or injunction shall forthwith make and return to the court, an inventory of the personal property and contents situated in and used in conducting or maintaining the alleged nuisance.

Any violation of the temporary order or injunction is a contempt of court. Mutilation or removal of a posted order that is in force is a contempt of court if the posted order or injunction contains a notice to that effect.

NEW SECTION. Sec. 4. A bond or security shall not be required of the city attorney, the prosecuting attorney, or the attorney general.

NEW SECTION. Sec. 5. A copy of the complaint, together with a notice of the time and place of the hearing on the application for a temporary injunction, shall be served upon the defendant at least three business days before the hearing. Service may also be made by posting the required documents in the same manner as is provided in section 3 of this act. If the defendant requests a continuance of the hearing, all temporary restraining orders and injunctions shall be extended as a matter of course.

NEW SECTION. Sec. 6. If the court finds at the hearing for an injunction, that the accounting, inventory, personal property, and contents of the place alleged to be a nuisance provide evidence of a moral nuisance as defined by RCW 7.48A.020 (1) through (4), the court may order the defendant to produce to the plaintiff a limited number of original films, film plates, publications, videotapes, any other obscene matter, and other discovery materials the court determines is necessary for evidentiary purposes to resolve the action on the merits.

The court may issue a temporary injunction enjoining the defendant and all other persons from removing or in any manner interfering with the court-ordered discovery. This discovery procedure supplements and does not replace any other discovery procedures and rules generally applicable to civil cases in this state.

NEW SECTION. Sec. 7. The hearing on the injunction shall have precedence over all other actions, except prior matters of the same character, criminal proceedings, election contests, hearings on temporary restraining orders and injunctions, and actions to forfeit vehicles used in violation of the uniform controlled substances act, chapter 69.50 RCW.

NEW SECTION. Sec. 8. An intentional violation of a restraining order, preliminary injunction, or injunction under this chapter is punishable as a contempt of court.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act are each added to chapter 7.48A RCW.

Passed the House February 27, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 71

[Senate Bill No. 5668]

JUVENILE PROCEEDINGS—VENUE

AN ACT Relating to venue of juvenile proceedings; amending RCW 13.40.060; and providing an effective date.

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

Sec. 1. Section 60, chapter 291, Laws of 1977 ex. sess. as last amended by section 6, chapter 299, Laws of 1981 and RCW 13.40.060 are each amended to read as follows:

(1) ~~((Proceedings under this chapter shall be commenced in the county where the juvenile resides. However, proceedings may be commenced in the county where an element of the alleged criminal offense occurred if so requested by the juvenile or by the prosecuting attorney of the county where the incident occurred:))~~ All actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2) ~~((If the hearing takes place in the county where an element of the alleged criminal offense occurred:))~~ The case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county where the juvenile resides for a disposition hearing. All costs and arrangements for care and transportation of the juvenile in custody shall be the responsibility of the receiving county as of the date of the transfer of the juvenile to such county, unless the counties otherwise agree.

(3) ~~((If the adjudicatory and disposition hearings take place in a county in which an element of the alleged offense occurred:))~~ The case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county in which the juvenile resides for supervision and enforcement of the disposition order. The court of the receiving county has jurisdiction to modify and enforce the disposition order.

(4) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when((:

~~(a))~~ there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun(~~(; or~~
~~(b) It appears that venue is incorrect under this section)).~~

NEW SECTION. Sec. 2. This act shall take effect September 1, 1989.

Passed the Senate March 6, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 72

[Substitute Senate Bill No. 5733]

TRADEMARK REGISTRATION AND PROTECTION

AN ACT Relating to trademark registration and protection; amending RCW 19.77.010, 19.77.020, 19.77.030, 19.77.040, 19.77.050, 19.77.080, 19.77.110, 19.77.130, 19.77.140, 19.77.150, and 19.77.900; adding new sections to chapter 19.77 RCW; and repealing RCW 19.77.100 and 19.77.120.

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

Sec. 1. Section 1, chapter 211, Laws of 1955 and RCW 19.77.010 are each amended to read as follows:

As used in this chapter:

(1) "Applicant" means the person filing an application for registration of a trademark under this chapter, his legal representatives, successors, or assigns of record with the secretary of state;

(2) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive;

(3) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark;

(4) "Dilution" means the material reduction of the distinctive quality of a famous mark through use of a mark by another person, regardless of the presence or absence of (a) competition between the users of the mark, or (b) likelihood of confusion, mistake, or deception arising from that use;

(5) "Person" means any individual, firm, partnership, corporation, association, union, or other organization;

~~((3))~~ (6) "Registered mark" means a trademark registered under this chapter;

(7) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors, or assigns of record with the secretary of state;

~~((4))~~ (8) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold

by others, and ~~((further includes without limitation a mark, name, symbol,))~~ any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or ~~((other advertising)) television programs~~ used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

~~((5))~~ (9) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state;

(10) "Trade name" shall have the same definition as under RCW 19.80.005(1);

(11) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subsection.

Sec. 2. Section 2, chapter 211, Laws of 1955 and RCW 19.77.020 are each amended to read as follows:

A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) Consists of or comprises the name, portrait, or signature identifying a particular living individual ~~((, except with his written consent))~~ who has not consented in writing to its registration; or

(5) Consists of a mark which,

(a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or

(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

(c) is primarily merely a surname: PROVIDED, That nothing in this subsection shall prevent the registration of a trademark used in this state by

the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as prima facie evidence that the trademark has become distinctive, as used on or in connection with the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a trademark by the applicant in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration; or

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name (~~previously~~) used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

A trade name is not registerable under this chapter. However, if a trade name also functions as a trademark, it is registerable as a trademark.

The secretary of state shall make a determination of registerability by considering the application record and the marks previously registered and subsisting under this chapter.

Sec. 3. Section 3, chapter 211, Laws of 1955 as amended by section 181, chapter 35, Laws of 1982 and RCW 19.77.030 are each amended to read as follows:

Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(1) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

(2) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

(3) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

(4) The date when the trademark was first used with (~~each of~~) such goods or services anywhere and the date when it was first used with (~~each of~~) such goods or services in this state by the applicant or his predecessor in business;

(5) A statement that the trademark is presently in use in this state by the applicant; (~~and~~)

(6) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form (~~thereof~~) or in such near resemblance

thereto as ~~((might be calculated))~~ to be likely, when used on or in connection with the goods or services of such other person, to cause confusion or mistake or to deceive ((or to be mistaken therefor)); and

(7) Such additional information or documents as the secretary of state may reasonably require.

A single application for registration of a trademark may specify all goods or services in a single class for which the trademark is actually being used, but may not specify goods or services in different classes.

The application shall be signed by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.

The application shall be accompanied by three specimens or facsimiles of the trademark for at least one of the goods or services for which its registration is requested, and a filing fee of fifty dollars payable to the secretary of state.

Sec. 4. Section 4, chapter 211, Laws of 1955 and RCW 19.77.040 are each amended to read as follows:

Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall issue a certificate of registration and deliver it to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible ~~((in evidence as competent and sufficient proof of the registration of such trademark))~~ in any action or judicial proceeding in any court of this state as prima facie evidence of:

- (1) The validity of the registration of the trademark;
- (2) The registrant's ownership of the trademark; and
- (3) The registrant's exclusive right to use the trademark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

Registration of a trademark under this chapter shall be constructive notice of the registrant's claim of ownership of the trademark throughout this state.

Sec. 5. Section 5, chapter 211, Laws of 1955 as amended by section 182, chapter 35, Laws of 1982 and RCW 19.77.050 are each amended to read as follows:

Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of ten years as to the goods or services for which the trademark is still in use in this state. A renewal fee of fifty dollars, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration.

~~((Any registration in force on September 1, 1955 shall expire five years from the date of the registration or one year after September 1, 1955, whichever date is later, and may be renewed as provided for renewing registrations under this chapter. A separate renewal application is required for goods in each class.~~

~~The secretary of state shall, within six months after September 1, 1955, notify all registrants of trademarks under previous acts of the date of expiration of their registrations by writing to the last known address of the registrants according to the files of the secretary of state, unless such registrations have been renewed in accordance with the provisions of this chapter.))~~

Sec. 6. Section 8, chapter 211, Laws of 1955 and RCW 19.77.080 are each amended to read as follows:

The secretary of state shall cancel from the register:

~~(1) ((After one year from September 1, 1955, all registrations under prior acts which are more than five years old and not renewed in accordance with this chapter;~~

~~(2)) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;~~

~~((3)) (2) All expired registrations not renewed under this chapter;~~

~~((4)) (3) Any registration concerning which ((a final decree of a court of competent jurisdiction, upon filing of a certified copy of such decree with the secretary of state, shall adjudge)) a court of competent jurisdiction has rendered a final judgment against the registrant, which has become unappealable, canceling the registration or finding that:~~

~~(a) ((That)) The registered trademark has been abandoned; ((or))~~

(b) ~~((That))~~ The registrant under this chapter or under a prior act is not the owner of the trademark; ((or))

(c) ~~((That))~~ The registration was granted ((improperly; or)) contrary to the provisions of this chapter;

(d) ~~((That))~~ The registration was obtained fraudulently; ((or))

(e) ~~((That the registration be canceled on any ground))~~ The registered trademark has become incapable of serving as a trademark; or

(f) The registered trademark is so similar to a trademark registered by another person in the United States patent and trademark office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, as to be likely to cause confusion or mistake or to deceive: PROVIDED, That such finding was made on petition of such other person and that should the registrant prove that he or she is the owner of a concurrent registration of the trademark in the United States patent and trademark office covering an area including this state, the registration hereunder shall not be canceled.

Sec. 7. Section 11, chapter 211, Laws of 1955 and RCW 19.77.110 are each amended to read as follows:

~~((The following general classes of goods are established for the convenient administration of this chapter, but do not limit or extend the applicant's or registrant's rights:~~

- ~~(1) Raw or partly prepared materials:~~
- ~~(2) Receptacles:~~
- ~~(3) Baggage, animal equipment, portfolios, and pocketbooks:~~
- ~~(4) Abrasives and polishing materials:~~
- ~~(5) Adhesives:~~
- ~~(6) Chemicals and chemical compositions:~~
- ~~(7) Cordage:~~
- ~~(8) Smokers' articles, not including tobacco products:~~
- ~~(9) Explosives, firearms, equipment and projectiles:~~
- ~~(10) Fertilizers:~~
- ~~(11) Inks and inking materials:~~
- ~~(12) Construction materials:~~
- ~~(13) Hardware and plumbing and steam fitting supplies:~~
- ~~(14) Metals and metal castings and forgings:~~
- ~~(15) Oils and greases:~~
- ~~(16) Paints and painters' materials:~~
- ~~(17) Tobacco products:~~
- ~~(18) Medicines and pharmaceutical preparations:~~
- ~~(19) Vehicles:~~
- ~~(20) Linoleum and oiled cloth:~~
- ~~(21) Electrical apparatus, machines, and supplies:~~
- ~~(22) Games, toys and sporting goods:~~
- ~~(23) Cutlery, machinery, and tools and parts thereof:~~

- ~~(24) Laundry appliances and machines.~~
- ~~(25) Locks and safes.~~
- ~~(26) Measuring and scientific appliances.~~
- ~~(27) Horological instruments.~~
- ~~(28) Jewelry and precious metal ware.~~
- ~~(29) Brooms, brushes, and dusters.~~
- ~~(30) Crockery, earthenware, and porcelain.~~
- ~~(31) Filters and refrigerators.~~
- ~~(32) Furniture and upholstery.~~
- ~~(33) Glassware.~~
- ~~(34) Heating, lighting and ventilating apparatus.~~
- ~~(35) Belting, hose, machinery packing and nonmetallic tires.~~
- ~~(36) Musical instruments and supplies.~~
- ~~(37) Paper and stationery.~~
- ~~(38) Prints and publications.~~
- ~~(39) Clothing.~~
- ~~(40) Fancy goods, furnishings and notions.~~
- ~~(41) Canes, parasols and umbrellas.~~
- ~~(42) Knitted, netted and textile fabrics, and substitutes therefor.~~
- ~~(43) Thread and yarn.~~
- ~~(44) Dental, medical and surgical appliances.~~
- ~~(45) Soft drinks and carbonated waters.~~
- ~~(46) Foods and ingredients of foods.~~
- ~~(47) Wines.~~
- ~~(48) Malt beverages and liquors.~~
- ~~(49) Distilled alcoholic liquors.~~
- ~~(50) Merchandise not otherwise classified.~~
- ~~(51) Cosmetics and toilet preparations.~~
- ~~(52) Detergents and soaps.)~~

The International Classification of Goods and Services to Which Trademarks Are Applied, as adopted in accordance with the Nice Agreement of 1957, as amended, shall be used for the convenient administration of this chapter. Such classification shall not be deemed to limit or extend the applicant's or registrant's rights. The short titles of such classifications are as follows:

- (1) Chemicals.
- (2) Paints.
- (3) Cosmetics and cleaning preparation.
- (4) Lubricants and fuels.
- (5) Pharmaceuticals.
- (6) Metal goods.
- (7) Machinery.
- (8) Hand tools.
- (9) Electrical and scientific apparatus.
- (10) Medical apparatus.

- (11) Environmental control apparatus.
- (12) Vehicles.
- (13) Firearms.
- (14) Jewelry.
- (15) Musical instruments.
- (16) Paper goods and printed matter.
- (17) Rubber goods.
- (18) Leather goods.
- (19) Nonmetallic building materials.
- (20) Furniture and articles not otherwise classified.
- (21) Housewares and glass.
- (22) Cordage and fibers.
- (23) Yarns and threads.
- (24) Fabrics.
- (25) Clothing.
- (26) Fancy goods.
- (27) Floor coverings.
- (28) Toys and sporting goods.
- (29) Meats and processed foods.
- (30) Staple foods.
- (31) Natural agricultural products.
- (32) Light beverages.
- (33) Wines and spirits.
- (34) Smokers' articles.
- (35) Advertising and business.
- (36) Insurance and financial.
- (37) Construction and repair.
- (38) Communication.
- (39) Transportation and storage.
- (40) Material treatment.
- (41) Education and entertainment.
- (42) Miscellaneous.

Sec. 8. Section 13, chapter 211, Laws of 1955 and RCW 19.77.130 are each amended to read as follows:

Any person who shall for himself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction, together with costs of such action including reasonable attorneys' fees.

Sec. 9. Section 14, chapter 211, Laws of 1955 and RCW 19.77.140 are each amended to read as follows:

(1) Subject to the provisions of RCW 19.77.900 any person who shall:

~~((1))~~ (a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive ~~((as to the source of origin of such goods or services))~~; or

~~((2))~~ (b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state~~((:))~~ on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive

shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under ~~((subdivision (2) of this section))~~ (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such ~~((use))~~ imitation is intended to be used to cause confusion or mistake, or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

(g) The nature and extent of any actual confusion;

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(i) The variety of goods or services on which each of the marks is or is not used;

(j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;

(k) Any other established fact probative of the effect of use.

NEW SECTION. Sec. 10. A new section is added to chapter 19.77 RCW to read as follows:

The owner of a famous mark shall be entitled, subject to the principles of equity, to an injunction against another person's use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

(1) Whether the mark is inherently distinctive or has become distinctive through substantially exclusive and continuous use;

(2) Whether the duration and extent of use of the mark are substantial;

(3) Whether the duration and extent of advertising and publicity of the mark are substantial;

(4) Whether the geographical extent of the trading area in which the mark is used is substantial;

(5) Whether the mark has substantial renown in its and in the other person's trading areas and channels of trade; and

(6) Whether substantial use of the same or similar marks is being made by third parties.

The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the registrant's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

Sec. 11. Section 15, chapter 211, Laws of 1955 and RCW 19.77.150 are each amended to read as follows:

Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. In exceptional cases the court may award to the prevailing party the costs of the suit including reasonable attorneys' fees.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

Sec. 12. Section 16, chapter 211, Laws of 1955 and RCW 19.77.900 are each amended to read as follows:

Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith ((at any time)) at common law prior to registration under this chapter; however, during any period subsequent to the effective date of this act when the registration of a mark under this chapter is in force and the registrant has not abandoned the trademark, no common law rights as against the registrant may be acquired.

NEW SECTION. Sec. 13. A new section is added to chapter 19.77 RCW to read as follows:

It is the intent of the legislature that, in construing this chapter, the courts be guided by the interpretation given by the federal courts to the federal trademark act of 1946, as amended, 15 U.S.C., Secs. 1051, et seq.

NEW SECTION. Sec. 14. A new section is added to chapter 19.77 RCW to read as follows:

This act applies prospectively only and not retroactively. The rights and obligations of this act shall accrue upon the effective date of this act to all prior trademark registrations then in effect, and the provisions of this act shall not apply to any cause of action arising prior to the effective date of this act.

NEW SECTION. Sec. 15. The following acts or parts of acts are each repealed:

(1) Section 10, chapter 211, Laws of 1955, section 65, chapter 81, Laws of 1971, section 185, chapter 35, Laws of 1982, section 23, chapter 202, Laws of 1988 and RCW 19.77.100; and

(2) Section 12, chapter 211, Laws of 1955 and RCW 19.77.120.

Passed the Senate March 6, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 73

[Senate Bill No. 5771]

RENTS—PERFECTION OF SECURITY INTEREST BY RECORDING ASSIGNMENT

AN ACT Relating to the assignment of rents; and amending RCW 7.28.230.

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

Sec. 1. Section 498, page 130, Laws of 1869 as last amended by section 1, chapter 122, Laws of 1969 ex. sess. and RCW 7.28.230 are each amended to read as follows:

(1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation

upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08-.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate.

Passed the Senate March 9, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 74

[House Bill No. 1163]

NONCHARTER CITIES—PRESENTATION AND FILING OF CLAIMS

AN ACT Relating to the presentment and filing of claims; and amending RCW 35.31.040.

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

Sec. 1. Section 35.31.040, chapter 7, Laws of 1965 as amended by section 13, chapter 164, Laws of 1967 and RCW 35.31.040 are each amended to read as follows:

All claims for damages against noncharter cities and towns must be presented to the city or town council and filed with the city or town clerk

within (~~one hundred and twenty days from the date that the damage occurred or the injury was sustained: PROVIDED, That if the claimant is incapacitated from verifying and filing his claim for damages within said time limitation, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agent representing the injured person~~) the period specified in the appropriate statute of limitations.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference.

All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, give the residence for six months last past of claimant, contain the item of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant.

No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation.

Passed the House February 10, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 75

[House Bill No. 1468]

EXCELLENCE IN EDUCATION AWARDS

AN ACT Relating to the award for educational excellence; and amending RCW 28A.03.523.

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

Sec. 1. Section 2, chapter 147, Laws of 1986 as last amended by section 1, chapter 251, Laws of 1988 and RCW 28A.03.523 are each amended to read as follows:

(1) The superintendent of public instruction shall establish an annual award program for excellence in education to recognize teachers, principals, administrators, school district superintendents, and school boards for their leadership, contributions, and commitment to education. The program shall recognize annually:

(a) (~~Three~~) Five teachers from each congressional district of the state. One individual must be an elementary level teacher, one must be a

junior high or middle school level teacher, and one must be a secondary level teacher. Teachers shall include educational staff associates;

(b) ~~((Three))~~ Five principals or administrators from ~~((each congressional district of))~~ the state;

(c) One school district superintendent from the state; and

(d) One school district board of directors from the state.

Not more than three teachers and three principals or administrators from each congressional district and one superintendent and one school board from the state may be recognized and receive awards in any school year.

(2) The awards for teachers and principals or administrators shall include certificates presented by the governor and the superintendent of public instruction at a public ceremony or ceremonies in appropriate locations.

(3) In addition to certificates under subsection (2) of this section, awards for teachers and principals or administrators shall include:

(a) A waiver of tuition and fees under RCW 28B.15.547 and a stipend not to exceed one thousand dollars to cover costs incurred in taking courses for which the tuition and fees have been waived under this subsection and RCW 28B.15.547. The stipend shall not be considered compensation for the purposes of RCW 28A.58.0951; or

(b) Teachers and principals or administrators, at their discretion, may elect to forego the waiver of tuition and fees and the stipend under subsection (3) of this section and apply for a grant not to exceed one thousand dollars, which grant shall be awarded under the provisions of RCW 28A.03.535. Within one year of receiving the award for excellence in education, teachers and principals or administrators shall notify the superintendent of public instruction in writing of their decision to apply for a grant or to receive the waiver of tuition and fees and the stipend under subsection (3) of this section.

Passed the House March 14, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 76

[House Bill No. 1162]

FIRE PROTECTION DISTRICTS—ANNEXATION OF CITIES

AN ACT Relating to annexation of cities and towns by fire protection districts; amending RCW 35.02.190 and 35.02.200; and adding a new section to chapter 52.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.04 RCW to read as follows:

When any city, code city, 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. 2. Section 35.13.247, chapter 7, Laws of 1965 as last amended by section 18, chapter 234, Laws of 1986 and RCW 35.02.190 are each amended to read as follows:

If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a city or town, ownership of all of the assets of the district shall be vested in the city or town, or, if the city or town has been annexed by another fire protection district, in the other fire protection district, upon payment in cash, properties or contracts for fire protection services to the district within one year, of a percentage of the value of said assets equal to the percentage of the value of the real property in entire district remaining outside the incorporated or annexed area. The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed or incorporated area who vote on the proposition, to require the annexing or incorporating city or town or fire protection district to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the city or town or fire protection district a reasonable fee for such fire protection, operation, and maintenance.

If all of a fire protection district is included in an area that incorporates as a city or town or is annexed to a city or town or fire protection district, all of the assets and liabilities of the fire protection district shall be transferred to the newly incorporated city or town upon its official date of incorporation or to the city or town or fire protection district upon the annexation.

Sec. 3. Section 35.13.248, chapter 7, Laws of 1965 as last amended by section 19, chapter 234, Laws of 1986 and RCW 35.02.200 are each amended to read as follows:

(1) If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a city or town, the ownership of all assets of the district shall remain in the district and the district shall pay to the city or town, or, if the city or town has been annexed by another fire protection district, to the other fire protection district within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if the area annexed or incorporated includes less than five percent of the assessed value of the real property of

the district, no payment shall be made to the city or town or fire protection district.

(2) As provided in RCW 35.02.210, the fire protection district from which territory is removed as a result of an incorporation or annexation shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

(3) For the purposes of this section, the word "assets" shall mean the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, the same to be determined by usual and accepted accounting methods. The amount of said liability shall be determined by reference to the fire district's balance sheet, produced in the regular course of business, which is nearest in time to the certification of the annexation of fire district territory by the city or town.

Passed the House February 8, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 77

[Substitute Senate Bill No. 5531]

EXCELLENCE IN EDUCATION AWARDS—GRANTS AND STIPENDS

AN ACT Relating to the award for excellence in education program; amending RCW 28A.03.523 and 28A.03.535; creating a new section; and repealing RCW 28B.15.547.

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

Sec. 1. Section 2, chapter 147, Laws of 1986 as last amended by section 1, chapter 251, Laws of 1988 and RCW 28A.03.523 are each amended to read as follows:

(1) The superintendent of public instruction shall establish an annual award program for excellence in education to recognize teachers, principals, administrators, school district superintendents, and school boards for their leadership, contributions, and commitment to education. The program shall recognize annually:

(a) Three teachers from each congressional district of the state. One individual must be an elementary level teacher, one must be a junior high or middle school level teacher, and one must be a secondary level teacher. Teachers shall include educational staff associates;

(b) Three principals or administrators from each congressional district of the state;

(c) One school district superintendent from the state; and

(d) One school district board of directors from the state.

Not more than three teachers and three principals or administrators from each congressional district and one superintendent and one school board from the state may be recognized and receive awards in any school year.

(2) The awards for teachers and principals or administrators shall include certificates presented by the governor and the superintendent of public instruction at a public ceremony or ceremonies in appropriate locations.

(3) In addition to certificates under subsection (2) of this section, awards for teachers and principals or administrators shall include:

(a) A ~~((waiver of tuition and fees under RCW 28B.15.547))~~ grant equal to one year's tuition at any state institution of higher education for a student attending a state institution of higher education or a grant equal to the average tuition at the state comprehensive and research universities for a student attending an independent college or university as defined in RCW 28B.80.245 and a stipend not to exceed one thousand dollars to cover costs incurred in taking courses ~~((for which the tuition and fees have been waived under this subsection and RCW 28B.15.547))~~ under this grant. Courses paid for under this section shall be completed within four years after the award is received. The grant and stipend shall not be considered compensation for the purposes of RCW 28A.58.0951; or

(b) Teachers and principals or administrators, at their discretion, may elect to forego ~~((the waiver of tuition and fees and))~~ the grant and stipend under ((subsection (3))) (a) of this ((section)) subsection and apply for ~~((a))~~ an educational grant not to exceed one thousand dollars, which grant shall be awarded under the provisions of RCW 28A.03.535.

Within one year of receiving the award for excellence in education, teachers and principals or administrators shall notify the superintendent of public instruction in writing of their decision to apply for ~~((a))~~ an educational grant or to receive ((the waiver of tuition and fees and the stipend under subsection (3) of this section)) a grant and stipend to attend a state institution of higher education or an independent college or university as defined in RCW 28B.80.245.

(4) All grants and stipends awarded under RCW 28A.03.520 through 28A.03.538 shall be administered by the higher education coordinating board. The board shall adopt rules providing for the disbursement of the grants and stipends and any repayments from recipients who do not meet the obligations of the grants and stipends.

Sec. 2. Section 7, chapter 147, Laws of 1986 as amended by section 3, chapter 251, Laws of 1988 and RCW 28A.03.535 are each amended to read as follows:

Teachers and principals or administrators who have received an award for excellence in education under RCW 28A.03.523 shall be eligible to apply for an educational grant in lieu of ~~((receiving a waiver of tuition and~~

~~fees and~~) a grant and stipend to attend a state institution of higher education or an independent college or university as defined in RCW 28B.80.245 as provided under RCW 28A.03.523(3). The superintendent of public instruction shall award the educational grant as long as a written grant application is submitted to the superintendent of public instruction within one year after the award was received. The grant application shall identify the educational purpose toward which the educational grant shall be used.

NEW SECTION. Sec. 3. Section 6, chapter 147, Laws of 1986 and RCW 28B.15.547 are each repealed.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 14, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 78

[Senate Bill No. 5580]

STATE AGENCIES—WRITE-OFF OF UNCOLLECTIBLE DEBTS

AN ACT Relating to agency write-offs of uncollectible accounts; amending RCW 50.24.200, 74.20A.220, 82.32.340, and 43.20B.030; and repealing RCW 43.20B.365 and 43.20B.625.

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

Sec. 1. Section 8, chapter 286, Laws of 1955 as amended by section 16, chapter 190, Laws of 1979 ex. sess. and RCW 50.24.200 are each amended to read as follows:

The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interest((s)), penalties, credits, or benefit overpayments ~~((at any time after three years from the date of delinquency or service of notice of benefit overpayment;))~~ if the commissioner ~~((and the attorney general are))~~ is satisfied that there are no ~~((available and lawful means by which such))~~ cost-effective means of collecting the contributions, interest, penalties, credits, or benefit overpayments ~~((may thereafter be collected))~~.

Sec. 2. Section 22, chapter 164, Laws of 1971 ex. sess. as last amended by section 16, chapter 171, Laws of 1979 ex. sess. and RCW 74.20A.220 are each amended to read as follows:

Any support debt due the department from a responsible parent ~~((which the secretary deems uncollectible may be transferred from accounts~~

~~receivable to a suspense account)) may be written off and cease to be accounted as an asset~~~~((: PROVIDED, That at any time after six years from the date a support debt was incurred, the secretary may charge off as uncollectible any support debt upon which))~~ if the secretary finds there ((is no available, practical, or lawful means by which said debt may be collected)) are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears.

The responsible parent owing a support debt may execute a written extension or waiver of any statute, including but not limited to RCW 4.56-.210, which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

Sec. 3. Section 82.32.340, chapter 15, Laws of 1961 as last amended by section 1, chapter 414, Laws of 1985 and RCW 82.32.340 are each amended to read as follows:

(1) Any tax or penalty which the department of revenue deems to be uncollectible may be transferred from accounts receivable~~((subject to approval by the director of financial management;))~~ to a suspense account and cease to be accounted an asset. Any item transferred shall continue to be a debt due the state from the taxpayer and may at any time within twelve years from the filing of a warrant covering such amount with the clerk of the superior court be transferred back to accounts receivable for the purpose of collection. The department of revenue may charge off as finally uncollectible any tax or penalty which it deems uncollectible at any time after twelve years from the date that the last tax return for the delinquent taxpayer was or should have been filed if the department of revenue ~~((and the attorney general are))~~ is satisfied that there are no ~~((available and lawful means by which such tax or penalty may thereafter be collected))~~ cost-effective means of collecting the tax or penalty.

After any tax or penalty has been charged off as finally uncollectible under the provisions of this section, the department of revenue may destroy any or all files and records pertaining to the liability of any taxpayer for such tax or penalty.

The department of revenue, subject to the approval of the state records committee, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer for such taxable year, who has fully paid all taxes, penalties and interest for such taxable year, or any preceding taxable year for which such taxes, penalties and interest have been fully paid. In the event that

such files and records are reproduced on film pursuant to RCW 40.20.020 for use in accordance with RCW 40.20.030, the original files and records may be destroyed immediately after reproduction and such reproductions may be destroyed at the expiration of the above five-year period, subject to the approval of the state records committee.

(2) Notwithstanding subsection (1) of this section (~~and subject to the approval of the office of financial management~~), the department may charge off any tax within its jurisdiction to collect that is owed by a taxpayer, including any penalty or interest thereon, (~~up to a maximum of one hundred dollars~~) if the department ascertains that the cost of collecting that tax would be greater than the total amount which is owed or likely in the near future to be owed by, and collectible from, the taxpayer.

Sec. 4. Section 2, chapter 91, Laws of 1965 ex. sess. as last amended by section 6, chapter 283, Laws of 1987 and RCW 43.20B.030 are each amended to read as follows:

Except as otherwise provided by law, there will be no collection of overpayments and other debts due the ~~((state))~~ department after the expiration of six years from the date of notice of such overpayment or other debt unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended shall cease to be a debt due the ~~((state))~~ department at the expiration of ten years from the date of the notice of the ~~((underlying))~~ overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of ~~((overpayments or))~~ any debt((s)) due the ~~((state))~~ department if it is no longer cost-effective to pursue. The department shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off ~~((and offers of compromise of disputed claims for overpayments and debts due the state))~~ of debts.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

(1) Section 71.02.400, chapter 25, Laws of 1959 and RCW 43.20B-.365; and

(2) Section 44, chapter 75, Laws of 1987 and RCW 43.20B.625.

Passed the Senate March 9, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 79

[Substitute Senate Bill No. 5786]

HARBOR LINES—RELOCATION—OAKLAND BAY AND GIG HARBOR

AN ACT Relating to the relocation of harbor lines; and amending RCW 79.92.030.

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

Sec. 1. Section 71, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.92.030 are each amended to read as follows:

The commission on harbor lines is hereby authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, King county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, Snohomish county, except no harbor lines shall be established west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5); in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city.

Passed the Senate March 9, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 80

[Senate Bill No. 5983]

WATER RIGHTS—COMPLEX CASES—RETENTION BY SUPERIOR COURT

AN ACT Relating to water rights; and amending RCW 90.03.160.

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

Sec. 1. Section 19, chapter 117, Laws of 1917 as amended by section 76, chapter 109, Laws of 1987 and RCW 90.03.160 are each amended to read as follows:

Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the department to take testimony by its duly authorized designee, as referee, and the designee shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court. The superior court may, in any complex case with more than one thousand named defendants, including the United States, retain for hearing and further processing such portions of the proceeding as pertain to a discrete class or classes of defendants or claims of water rights if the court determines that: (1) Resolution of claims of such classes appear to involve significant issues of law, either procedural or substantive; and (2) such a retention will both expedite the conclusion of the case and reduce the overall expenditures of the plaintiff, defendants, and the court.

Passed the Senate March 6, 1989.

Passed the House March 31, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 81

[Substitute House Bill No. 1774]

SKI AREA OPERATORS—LIMITATIONS ON LIABILITY

AN ACT Relating to duties of operators and users of commercial ski areas; amending RCW 70.117.010, 70.117.020, and 70.117.030; adding new sections to chapter 70.117 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 70.117 RCW to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Trails" or "runs" means those trails or runs that have been marked, signed, or designated by the ski area operator as ski trails or ski runs within the ski area boundary.

Sec. 2. Section 1, chapter 139, Laws of 1977 ex. sess. and RCW 70-117.010 are each amended to read as follows:

(1) The operator of any ski area shall maintain a sign system based on international or national standards.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "~~((Men))~~ Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when ~~((men are))~~ a person is working on the passenger tramway.

(2) The interior of each reversible aerial tramway and gondola lift shall be prominently posted to show:

(a) The maximum capacity of each reversible aerial tramway and gondola lift in pounds and number of passengers (which shall also be posted at each loading area); and

(b) Instructions for procedure in emergencies.

(3) The following signs shall be posted at all aerial lifts except gondola lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Keep Ski Tips Up" (ahead of any point where skis may come in contact with a platform or the snow surface);

(c) "Unload Here";

(d) "Safety Gate" (if applicable);

(e) "Remove Pole Straps from Wrists" (at loading area); and

(f) Sign visible at all points of downhill loading, listing downhill capacity of lift.

(4) The following signs shall be posted at all surface lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Stay in Track";

(c) "Unload Here";

(d) "Safety Gate"; and

(e) "Remove Pole Straps from Wrists" (at loading area).

(5) The following signs shall be posted at all tows:

- (a) "No Loose Scarves
No Loose Clothing
No Long Hair Exposed"
(at loading area);
- (b) "Stay in Track";
- (c) "Unload Here"; and
- (d) "Safety Gate".

(6) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(7) If a particular trail or ~~((slope))~~ run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or ~~((slope))~~ run involved, and no person shall ski on a ~~((slope))~~ run or trail which has been designated "Closed".

(8) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a person embarking on such a lift or tow shall be considered to be a trespasser.

~~(9) ((An operator shall prominently place a notice containing the substance of RCW 70.117.030 in such places as are necessary to notify the public:~~

~~((+))) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.~~

~~((+++)) (10) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:~~

~~(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and~~

~~(b) The skiing-ability level recommended for users of the lift and the ~~((slopes))~~ runs served by the device shall be classified "easiest", "more difficult", and "most difficult".~~

Sec. 3. Section 2, chapter 139, Laws of 1977 ex. sess. and RCW 70.117.020 are each amended to read as follows:

(1) In addition to the specific requirements of this section, all skiers shall conduct themselves within the limits of their individual ability and shall not act in a manner that may contribute to the injury of themselves or any other person.

(2) No person shall:

- (a) Embark or disembark upon a ski lift except at a designated area;

(b) Throw or expel any object from any tramway, ski lift, commercial skimobile, or other similar device while riding on the device;

(c) Act in any manner while riding on a rope tow, wire rope tow, j-bar, t-bar, ski lift, or similar device that may interfere with the proper or safe operation of the lift or tow;

(d) Wilfully engage in any type of conduct which may injure any person, or place any object in the uphill ski track which may cause another to fall, while traveling uphill on a ski lift; or

(e) Cross the uphill track of a j-bar, t-bar, rope tow, wire rope tow, or other similar device except at designated locations.

(3) Every person shall maintain control of his or her speed and course at all times, and shall stay clear of any snowgrooming equipment, any vehicle, any lift tower, and any other equipment on the mountain. ~~((Snow grooming equipment or any other vehicles shall be equipped with a flashing yellow light at any time the vehicle is moving on or in the vicinity of a ski run.))~~

(4) A person shall be the sole judge of his or her ability to negotiate any trail, ~~((slope))~~ run, or uphill track and no action shall be maintained against any operator by reason of the condition of the track, trail, or ~~((slope))~~ run unless the condition results from the negligence of the operator.

(5) Any person who boards a rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device shall be presumed to have sufficient abilities to use the ~~((lift))~~ device. No liability shall attach to any operator or attendant for failure to instruct the person on the use of the device, but a person shall follow any written or verbal instructions that are given regarding the use.

(6) Because of the inherent risks in the sport of skiing all persons using the ski hill shall exercise reasonable care for their own safety. However, the primary duty shall be on the person skiing downhill to avoid any collision with any person or object below him or her.

(7) ~~((Subsection (6) of this section notwithstanding.))~~ Any person skiing ((on other than improved)) outside the confines of trails open for skiing or ((slopes)) runs open for skiing within the ski area boundary shall be responsible for any injuries or losses resulting from his or her action.

(8) ~~((Subsections (6) and (7) of this section notwithstanding.))~~ Any person on foot or on any type of sliding device shall be responsible for any collision whether the collision is with another person or with an object.

(9) A person embarking on a lift or tow without authority shall be considered to be a trespasser.

Sec. 4. Section 3, chapter 139, Laws of 1977 ex. sess. and RCW 70.117.030 are each amended to read as follows:

(1) Any person who is involved in a skiing accident and who departs from the scene of the accident without leaving personal identification or otherwise clearly identifying himself or herself before notifying the proper

authorities or obtaining assistance, knowing that any other person involved in the accident is in need of medical or other assistance, shall be guilty of a misdemeanor.

(2) An operator shall place a prominent notice containing the substance of this section in such places as are necessary to notify the public.

NEW SECTION. Sec. 5. A new section is added to chapter 70.117 RCW to read as follows:

Ski area operators shall place a notice of the provisions of RCW 70.117.020(7) on their trail maps, at or near the ticket booth, and at the bottom of each ski lift or similar device.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

****NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.***

*Sec. 7 was vetoed, see message at end of chapter.

Passed the House March 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 19, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 19, 1989.

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

"I am returning herewith, without my approval as to section 7, Substitute House Bill No. 1774 entitled:

"AN ACT Relating to duties of operators and users of commercial ski areas."

This bill reduces the liability exposure of ski area operators and increases the responsibilities of those operators to warn skiers. The need for the emergency clause is not warranted due to the fact that the next ski season will not be starting until long after this bill has become effective in the ordinary course.

With the exception of section 7, Substitute House Bill No. 1774 is approved."

CHAPTER 82

[Senate Bill No. 5874]

MARITIME COMMEMORATIVE OBSERVANCE

AN ACT Relating to maritime commemorative observance; amending RCW 27.60.900; adding a new section to chapter 27.34 RCW; creating a new section; repealing RCW 27.60-.045; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Robert Gray's discovery of the Columbia river and Gray's Harbor in 1792 provided the foundation for American claims to sovereignty over the Oregon country;

(b) George Vancouver, following in the tradition of scientific discovery inaugurated by Captain Cook, commanded an expedition that made many contributions to the understanding of world geography, including the existence of Puget Sound, which he explored in 1792;

(c) The Spanish/Mexican outpost at Neah Bay, founded in 1792 to establish a southern limit to Russian and English encroachment on presumed Spanish prerogatives in the north Pacific, was the first European settlement in the state of Washington.

(2) The legislature intends for the Washington state historical society to plan and implement an appropriate commemoration and celebration of the bicentennials of the epic maritime accomplishments of 1792, which separately and collectively represent the multicultural nature of Euroamerican exploration in the Northwest and the onset of sustained contact with Washington's native people.

NEW SECTION. Sec. 2. A new section is added to chapter 27.34 RCW to read as follows:

(1) The Washington state historical society shall plan and implement an appropriate commemorative celebration of the bicentennials of the maritime accomplishments in 1792 of Robert Gray and George Vancouver, and the establishment of a Spanish outpost at Neah Bay.

(2) To accomplish this purpose, the society shall:

(a) Coordinate its activities with the Grays Harbor Tall Ships construction program;

(b) Organize museum exhibitions, including components that can travel to all sections of the state;

(c) Conduct a maritime heritage markers program along the Pacific coast, Puget Sound, and waterways in the Columbia river basin;

(d) Issue publications, organize festivals and scholarly symposia, and conduct other activities as may be appropriate.

(3) The society shall cooperate with the entities in the state of Oregon and the province of British Columbia that are planning similar activities.

(4) The society shall create an advisory committee to review and comment upon the society's commemorative plan and implementation. The committee shall have nine members, five of whom shall be citizens from areas of the state which have a special affinity to the explorations being commemorated and shall be appointed by the society. Four members shall be legislators. The speaker of the house of representatives shall appoint one member from each caucus and the president of the senate shall appoint one member from each caucus. Vacancies in the committee may be filled in accordance with original appointment procedures.

Sec. 3. Section 6, chapter 90, Laws of 1982 as amended by section 3, chapter 268, Laws of 1985 and RCW 27.60.900 are each amended to read as follows:

The 1989 Washington centennial commission as established by this chapter shall cease to exist on (~~December 31, 1993~~) June 30, 1990.

NEW SECTION. Sec. 4. Section 2, chapter 268, Laws of 1985, section 2, chapter 195, Laws of 1987 and RCW 27.60.045 are each repealed.

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

*Sec. 5 was vetoed, see message at end of chapter.

Passed the Senate March 6, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 19, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 19, 1989.

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

"I am returning herewith, without my approval as to section 5, Senate Bill No. 5874 entitled:

"AN ACT Relating to maritime commemorative observance."

This bill transfers authority for planning celebrations of certain maritime historical events from the Centennial Commission to the Washington State Historical Society. Section 5 contains an emergency clause requiring the Act to take effect immediately.

The emergency clause eliminates the possibility of a smooth transition as planning authority shifts from one entity to another. I am advised that the Washington State Historical Society intends to work with all interested parties and to build on the planning activities begun by the Centennial Commission. Removal of the emergency clause facilitates this coordination.

With the exception of section 5, Senate Bill No. 5874 is approved."

CHAPTER 83

[Senate Bill No. 5370]

SCHOOLS—SELF-STUDY—PROCEDURES AND TIME LIMITS

AN ACT Relating to self-study of schools; and amending RCW 28A.58.085.

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

Sec. 1. Section 2, chapter 349, Laws of 1985 as amended by section 2, chapter 256, Laws of 1988 and RCW 28A.58.085 are each amended to read as follows:

(1) Each school district board of directors shall develop a schedule and process by which each public school within its jurisdiction shall undertake self-study procedures on a regular basis: PROVIDED, That districts may

allow two or more elementary school buildings in the district to undertake jointly the self-study process. Each school may follow the accreditation process developed by the state board of education under RCW 28A.04.120 (6), although no school is required to file for actual accreditation, or the school may follow a self-study process developed locally. ~~((Whatever process is used must focus upon the quality and appropriateness of the school's educational program and the results of its operational efforts:))~~ The initial self-study process within each district shall begin by September 1, 1986, and should be completed for all schools within a district by the end of the 1990-91 school year.

(2) Any self-study process must include the participation of staff, parents, members of the community, and students, where appropriate to their age.

(3) The self-study process that is used must focus upon the quality and appropriateness of the school's educational program and the results of its operational effort. The primary emphasis throughout the process shall be placed upon:

~~((1))~~ (a) Achieving educational excellence and equity;

~~((2))~~ (b) Building stronger links with the community; and

~~((3))~~ (c) Reaching consensus upon educational expectations through community involvement and corresponding school management.

~~((The initial self-study process within each district shall begin by September 1, 1986, and should be completed for all schools within a district by the end of the 1990-91 school year.))~~

(4) The state board of education shall ~~((develop))~~ adopt rules ~~((and regulations))~~ governing procedural criteria. Such rules ~~((and regulations))~~ should be flexible so as to accommodate local goals and circumstances. The rules ~~((and regulations))~~ may allow for waiver of the self-study for economic reasons and may also allow for waiver of the initial self-study if a district or its schools have participated successfully in an official accreditation process or in a similar assessment of educational programs within the last three years. The self-study process shall be conducted on a cyclical basis every seven years following the initial 1990-91 period.

(5) The superintendent of public instruction shall provide training to assist districts in their self-studies.

(6) Each district shall report every two years to the superintendent of public instruction on the scheduling and implementation of their self-study activities. The report shall include information about how the district and each school within the district have addressed the issue of class size and staffing patterns.

Passed the Senate March 8, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 19, 1989.

Filed in Office of Secretary of State April 19, 1989.

CHAPTER 84

[Substitute Senate Bill No. 5127]

BOUNDARY REVIEW BOARDS—ORGANIZATION, POWERS, AND PROCEDURES

AN ACT Relating to boundary review boards; amending RCW 35.02.078, 36.93.150, 36.93.100, 36.93.105, 36.93.170, 36.93.180, 35.02.170, 35.21.790, and 35A.21.210; adding new sections to chapter 36.93 RCW; adding new sections to chapter 35.13 RCW; adding new sections to chapter 35A.14 RCW; adding a new section to chapter 35.02 RCW; adding a new section to chapter 35.07 RCW; adding a new section to chapter 35.10 RCW; adding a new section to chapter 35.16 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35.43 RCW; adding a new section to chapter 35.61 RCW; adding a new section to chapter 35.67 RCW; adding a new section to chapter 35.91 RCW; adding a new section to chapter 35.92 RCW; adding a new section to chapter 35A.02 RCW; adding a new section to chapter 35A.03 RCW; adding a new section to chapter 35A.05 RCW; adding a new section to chapter 35A.15 RCW; adding a new section to chapter 35A.16 RCW; adding a new section to chapter 52.02 RCW; adding a new section to chapter 52.04 RCW; adding a new section to chapter 52.06 RCW; adding a new section to chapter 52.08 RCW; adding a new section to chapter 52.10 RCW; adding a new section to chapter 53.48 RCW; adding a new section to chapter 54.08 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 54.32 RCW; adding a new section to chapter 56.04 RCW; adding a new section to chapter 56.08 RCW; adding a new section to chapter 56.24 RCW; adding a new section to chapter 56.28 RCW; adding a new section to chapter 56.32 RCW; adding a new section to chapter 56.36 RCW; adding a new section to chapter 57.04 RCW; adding a new section to chapter 57.08 RCW; adding a new section to chapter 57.24 RCW; adding a new section to chapter 57.28 RCW; adding a new section to chapter 57.32 RCW; adding a new section to chapter 57.36 RCW; adding a new section to chapter 57.40 RCW; adding a new section to chapter 57.90 RCW; adding a new section to chapter 85.38 RCW; adding a new section to chapter 86.15 RCW; adding a new section to chapter 87.03 RCW; adding a new section to chapter 87.52 RCW; adding a new section to chapter 87.53 RCW; adding a new section to chapter 87.56 RCW; and repealing RCW 36.93.050 and 36.93.060.

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

***Sec. 1. Section 10, chapter 234, Laws of 1986 and RCW 35.02.078 are each amended to read as follows:**

An election shall be held in the area proposed to be incorporated to determine whether the proposed city or town shall be incorporated (~~if the boundary review board approves or modifies and approves the proposal, or~~) if the county legislative authority does not disapprove the proposal as provided in RCW 35.02.070. Voters at this election shall determine if the area is to be incorporated.

The initial election on the question of incorporation shall be held at the next special election date specified in RCW 29.13.020 that occurs sixty or more days after the final public hearing by the county legislative authority or authorities, or (~~the approval or modification and approval~~) by the boundary review board or boards. The county legislative authority or authorities shall call for this election and, if the incorporation is approved, shall call for other elections to elect the elected officials as provided in this section. If the vote in favor of the incorporation receives forty percent or less of the total vote on the question of incorporation, no new election on the question of incorporation for the area or any portion of the area proposed to be incorporated may

be held for a period of three years from the date of the election in which the incorporation failed.

If the incorporation is authorized as provided by RCW 35.02.120, separate elections shall be held to nominate and elect persons to fill the various elective offices prescribed by law for the population and type of city or town, and to which it will belong. The primary election to nominate candidates for these elective positions shall be held at the next special election date, as specified in RCW 29.13.020, that occurs sixty or more days after the election on the question of incorporation. The election to fill these elective positions shall be held at the next special election date, as specified in RCW 29.13.020, that occurs thirty or more days after certification of the results of the primary election.

*Sec. 1 was vetoed, see message at end of chapter.

*Sec. 2. Section 15, chapter 189, Laws of 1967 as last amended by section 7, chapter 477, Laws of 1987 and RCW 36.93.150 are each amended to read as follows:

The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

- (1) Approval of the proposal as submitted;
- (2) Subject to RCW 35.02.170, modification of the proposal by adjusting boundaries to add or delete territory: **PROVIDED**, That any proposal for annexation by the board shall be subject to RCW 35.21.010 and shall not add additional territory, the amount of which is greater than that included in the original proposal: **PROVIDED FURTHER**, That such modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions: **AND PROVIDED FURTHER**, That a board shall not modify a proposed incorporation of a city by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board;
- (3) Determination of a division of assets and liabilities between two or more governmental units where relevant;
- (4) Determination whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district; or
- (5) Disapproval of the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district(~~(: PROVIDED, That a board shall not have jurisdiction)~~); (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter

36.96 RCW; nor (c) disapprove the incorporation of a city or disincorporation of a city or town.

Unless the board shall disapprove a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120. When the board, after due proceedings held, disapproves a proposed action other than an incorporation or disincorporation of a city or town, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record. A document describing an action, finding, or conclusion made by a boundary review board may be signed by the chairman or vice-chairman at or out of a public meeting.

****Sec. 2 was vetoed, see message at end of chapter.***

Sec. 3. Section 10, chapter 189, Laws of 1967 as last amended by section 3, chapter 477, Laws of 1987 and RCW 36.93.100 are each amended to read as follows:

The board shall review and approve, disapprove, or modify any of the actions set forth in RCW 36.93.090 when any of the following shall occur within forty-five days of the filing of a notice of intention:

(1) Three members of a five-member boundary review board or five members of a boundary review board in a class AA county files a request for review; PROVIDED, That the members of the boundary review board shall not be authorized to file a request for review of the following actions:

(a) The incorporation or change in the boundary of any city, town, or special purpose district;

(b) The extension of permanent water service outside of its existing corporate boundaries by a city, town, or special purpose district where such extension is through the installation of water mains of six inches or less in diameter; or

(c) The extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district where such extension is through the installation of sewer mains of eight inches or less in diameter;

(2) Any governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located, files a request for review of the specific action;

(3) A petition requesting review is filed and is signed by:

(a) Five percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the boundary review board in its discretion subject to immediate review by writ of certiorari to the superior court); or

(b) An owner or owners of property consisting of five percent of the assessed valuation within such area;

(4) The majority of the members of boundary review boards concur with a request for review when a petition requesting the review is filed by five percent of the registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action.

If a period of forty-five days shall elapse without the board's jurisdiction having been invoked as set forth in this section, the proposed action shall be deemed approved.

If a review of a proposal is requested, the board shall make a finding as prescribed in RCW 36.93.150 within one hundred twenty days after the filing of such a request for review. If this period of one hundred twenty days shall elapse without the board making a finding as prescribed in RCW 36.93.150, the proposal shall be deemed approved unless the board and the person who submitted the proposal agree to an extension of the one hundred twenty day period.

Sec. 4. Section 5, chapter 147, Laws of 1984 and RCW 36.93.105 are each amended to read as follows:

The following actions shall not be subject to potential review by a boundary review board:

(1) Annexations of territory to a water or sewer district pursuant to RCW 36.94.410 through 36.94.440 (~~shall not be reviewed by a boundary review board~~);

(2) Revisions of city or town boundaries pursuant to RCW 35.21.790 or 35A.21.210;

(3) Adjustments to city or town boundaries pursuant to section 24 of this act; and

(4) Adjustments to city and town boundaries pursuant to sections 12 through 15 of this act.

Sec. 5. Section 17, chapter 189, Laws of 1967 as last amended by section 33, chapter 234, Laws of 1986 and RCW 36.93.170 are each amended to read as follows:

In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive ~~((use))~~ plans and zoning, as adopted under chapter 35-.63, 35A.63, or 36.70 RCW; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW.

Sec. 6. Section 18, chapter 189, Laws of 1967 as last amended by section 10, chapter 332, Laws of 1981 and RCW 36.93.180 are each amended to read as follows:

The decisions of the boundary review board shall attempt to achieve the following objectives:

- (1) Preservation of natural neighborhoods and communities;
- (2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;
- (3) Creation and preservation of logical service areas;
- (4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries;

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

~~((10) Provide reasonable assurance that the extension of municipal services and the additional payments to be made by the property owners of the area to be annexed in the form of taxes will remain reasonably equal to the value of the additional municipal services to be received during a period of ten years following the effective date of the proposed annexation. This objective shall apply only to cities with a population of 400,000 or more which initiates a resolution for annexation proceedings)).~~

Sec. 7. Section 2, chapter 220, Laws of 1975 1st ex. sess. as amended by section 25, chapter 234, Laws of 1986 and RCW 35.02.170 are each amended to read as follows:

~~((Centerlines of public streets, roads or highways shall not be used to define any part of a boundary of a city or town in an incorporation or annexation proceeding.))~~ The right of way line of any public street, road or highway, or any segment thereof, may be used to define a part of a corporate boundary in an incorporation ~~((or annexation))~~ proceeding. The boundaries of a newly incorporated city or town shall not include a portion of the right of way of any public street, road or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way.

NEW SECTION. Sec. 8. A new section is added to chapter 35.13 RCW to read as follows:

The boundaries of a city or town arising from an annexation of territory shall not include a portion of the right of way of any public street, road, or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. However, the right of way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding.

NEW SECTION. Sec. 9. A new section is added to chapter 35A.14 RCW to read as follows:

The boundaries of a code city arising from an annexation of territory shall not include a portion of the right of way of any public street, road, or highway except where the boundary runs from one edge of the right of way

to the other edge of the right of way. However, the right of way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding.

Sec. 10. Section 17, chapter 220, Laws of 1975 1st ex. sess. and RCW 35.21.790 are each amended to read as follows:

(1) The governing bodies of a county and any city or town located therein may by agreement revise any part of the corporate boundary of the city or town which coincides with the centerline, edge, or any portion of a public street, road or highway right of way by substituting therefor a right of way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city or town.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city or town council or commission and by ordinance or resolution of the ~~((board of))~~ county ~~((commissioners or county council))~~ legislative authority. Such a boundary revision is not subject to potential review by a boundary review board.

Sec. 11. Section 18, chapter 220, Laws of 1975 1st ex. sess. and RCW 35A.21.210 are each amended to read as follows:

(1) The governing bodies of a county and any code city ~~((or town))~~ located therein may by agreement revise any part of the corporate boundary of the city ~~((or town))~~ which coincides with the centerline, edge, or any portion of a public street, road or highway right of way by substituting therefor a right of way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city ~~((or town))~~.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city ~~((or town))~~ council ~~((or commission))~~ and by ordinance or resolution of the ~~((board of county commissioners or))~~ county ~~((council))~~ legislative authority. Such a boundary revision is not subject to potential review by a boundary review board.

NEW SECTION. Sec. 12. A new section is added to chapter 35.13 RCW to read as follows:

The purpose of sections 12 through 15 of this act is to establish a process for the adjustment of existing or proposed city boundary lines to avoid a situation where a common boundary line is or would be located within a right of way of a public street, road, or highway, or a situation where two cities are separated or would be separated by only the right of way of a public street, road, or highway, other than situations where a boundary line runs from one edge of the right of way to the other edge of the right of way.

As used in sections 12 through 15 of this act, "city" includes every city or town in the state, including a code city operating under Title 35A RCW.

NEW SECTION. Sec. 13. A new section is added to chapter 35.13 RCW to read as follows:

(1) This section provides a method to adjust the boundary lines between two cities where the two cities share a common boundary within a right of way of a public street, road, or highway, or the two cities have a portion of their boundaries separated only by all or part of the right of way of a public street, road, or highway. However, this section does not apply to situations where a boundary line runs from one edge of the right of way to the other edge of the right of way.

(2) The councils of any two cities in a situation described in subsection (1) of this section may enter into an agreement to alter those portions of their boundaries that are necessary to eliminate this situation and create a partial common boundary on either edge of the right of way of the public street, road, or highway. An agreement made under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in subsection (1) of this section.

A boundary line adjustment under this section is not subject to potential review by a boundary review board.

NEW SECTION. Sec. 14. A new section is added to chapter 35.13 RCW to read as follows:

The councils of any two cities that will be in a situation described in section 13(1) of this act as the result of a proposed annexation by one of the cities may enter into an agreement to adjust those portions of the annexation proposal and the boundaries of the city that is not proposing the annexation. Such an agreement shall not be effective unless the annexation is made.

The annexation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet the descriptions of section 13(1) of this act shall be adjusted by agreement between the two cities within one hundred eighty days of the effective date of the annexation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in section 13(1) of this act.

A boundary line adjustment under this section is not subject to potential review by a boundary review board.

NEW SECTION. Sec. 15. A new section is added to chapter 35.13 RCW to read as follows:

(1) The purpose of this section is to avoid situations arising where the boundaries of an existing city and a newly incorporated city would create a situation described in section 13(1) of this act.

(2) A boundary review board that reviews the boundaries of a proposed incorporation may enter into an agreement with the council of a city, that would be in a situation described in subsection (1) of this section as the result of a proposed incorporation of a city, to adjust the boundary line of the city and those of the city proposed to be incorporated to avoid this situation described in subsection (1) of this section if the incorporation were to be approved by the voters. Such an agreement shall not be effective unless the incorporation occurs.

The incorporation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet create a situation described in section 13(1) of this act shall be adjusted by agreement between the two cities within one hundred eighty days of the official date of the incorporation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in section 13(1) of this act.

A boundary line adjustment under this section is not subject to potential review by a boundary review board.

NEW SECTION. Sec. 16. A new section is added to chapter 36.93 RCW to read as follows:

Boundary review board approval, or modification and approval, of a proposed annexation by a city, town, or special purpose district shall authorize annexation as approved and shall not authorize any other annexation action.

NEW SECTION. Sec. 17. A new section is added to chapter 36.93 RCW to read as follows:

The boundary review board in class AA counties shall consist of eleven members chosen as follows:

- (1) Three persons shall be appointed by the governor;
- (2) Three persons shall be appointed by the county appointing authority;
- (3) Three persons shall be appointed by the mayors of the cities and towns located within the county; and
- (4) Two persons shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and two initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one initial appointee to

serve a term of one year, and two initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The county appointing authority shall designate one of its initial appointees to serve a term of two years, and two of its initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one of its initial appointees to serve a term of one year, and two of its initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The mayors making the initial city and town appointments shall designate two of their initial appointees to serve terms of two years, and one of their initial appointees to serve a term of four years, if the appointments are made in an odd-numbered year, or two of their initial appointees to serve terms of one year, and one of their initial appointees to serve a term of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The board shall make two initial appointments from the nominees of special districts, with one appointee serving a term of four years and one initial appointee serving a term of two years, if the appointments are made in an odd-numbered year, or one initial appointee serving a term of three years and one initial appointee serving a term of one year if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof.

NEW SECTION. Sec. 18. A new section is added to chapter 36.93 RCW to read as follows:

The boundary review board in all counties other than class AA counties shall consist of five members chosen as follows:

- (1) Two persons shall be appointed by the governor;
- (2) One person shall be appointed by the county appointing authority;
- (3) One person shall be appointed by the mayors of the cities and towns located within the county; and
- (4) One person shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and one initial appointee to serve a term of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and one initial appointee to serve a term of three years, if the appointments are made in an even-numbered year, with the length of a term being calculated from the first day of February in the year that the appointment was made.

The initial appointee of the county appointing authority shall serve a term of two years, if the appointment is made in an odd-numbered year, or a term of one year, if the appointment is made in an even-numbered year. The initial appointee by the mayors shall serve a term of four years, if the appointment is made in an odd-numbered year, or a term of three years, if the appointment is made in an even-numbered year. The length of the term shall be calculated from the first day in February in the year the appointment was made.

The board shall make one initial appointment from the nominees of special districts to serve a term of two years if the appointment is made in an odd-numbered year, or a term of one year if the appointment is made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof.

NEW SECTION. Sec. 19. A new section is added to chapter 36.93 RCW to read as follows:

The executive of the county shall make the appointments under sections 17 and 18 of this act for the county, if one exists, or otherwise the county legislative authority shall make the appointments for the county.

The mayors of all cities and towns in the county shall meet on or before the last day of January in each odd-numbered year to make such appointments for terms to commence on the first day of February in that year. The date of the meeting shall be called by the mayor of the largest city or town in the county, and the mayor of the largest city or town in the county who attends the meeting shall preside over the meeting. Selection of each appointee shall be by simple majority vote of those mayors who attend the meeting.

Any special district in the county may nominate a person to be appointed to the board on or before the last day of January in each odd-numbered year that the term for this position expires. The board shall make its appointment of a nominee or nominees from the special districts during

the month of February following the date by which such nominations are required to be made.

The county appointing authority and the mayors of cities and towns within the county shall make their initial appointments for newly created boards within sixty days of the creation of the board or shall make sufficient additional appointments to increase a five-member board to an eleven-member board within sixty days of the date the county becomes a class AA county. The board shall make its initial appointment or appointments of board members from the nominees of special districts located within the county within ninety days of the creation of the board or shall make an additional appointment of a board member from the nominees of special districts located within the county within ninety days of the date the county becomes a class AA county.

The term of office for all appointees other than the appointee from the special districts shall commence on the first day of February in the year in which the term is to commence. The term of office for the appointee from nominees of special districts shall commence on the first day of March in the year in which the term is to commence.

Vacancies on the board shall be filled by appointment of a person to serve the remainder of the term in the same manner that the person whose position is vacant was filled.

NEW SECTION. Sec. 20. A new section is added to chapter 36.93 RCW to read as follows:

Each boundary review board that is in existence as of the effective date of this section shall designate the terms of office of its members to conform with the staggering of terms as established under sections 17 and 18 of this act by September 1, 1989. The members who were appointed independently by the governor shall remain as gubernatorial appointees. The member or members who were appointed by the governor from nominees of the county legislative authority shall be considered to be appointees of the county. The member or members who were appointed by the governor from nominees of the mayors shall be considered to be appointees of the mayors. The member or members who were appointed by the governor from nominees of the special districts shall be considered to be appointees by the board from nominees of the special districts.

No board member may serve on a board more than eight consecutive years. However, any board member serving on the effective date of this section who has served or will serve in excess of this limitation as his or her term of office is adjusted under this section may remain in office for the remainder of his or her term.

NEW SECTION. Sec. 21. A new section is added to chapter 36.93 RCW to read as follows:

Whenever appointments under sections 17 through 20 of this act have not been made by the appointing authority, the size of the board shall be

considered to be reduced by one member for each position that remains vacant or unappointed.

NEW SECTION. Sec. 22. A new section is added to chapter 35.13 RCW to read as follows:

A city or town may cause a proposition authorizing an area to be annexed to the city or town to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the city or town council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition.

NEW SECTION. Sec. 23. A new section is added to chapter 35A.14 RCW to read as follows:

A code city may cause a proposition authorizing an area to be annexed to the city to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the code city council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition.

NEW SECTION. Sec. 24. A new section is added to chapter 35.13 RCW to read as follows:

The boundaries of a city shall be adjusted to include or exclude the remaining portion of a parcel of land located partially within and partially without of the boundaries of that city upon the governing body of the city adopting a resolution approving such an adjustment that was requested in a petition signed by the owner of the parcel. A boundary adjustment made pursuant to this section shall not be subject to potential review by the boundary review board of the county within which the parcel is located if the remaining portion of the parcel to be included or excluded from the city is located in the unincorporated area of the county and the adjustment is

approved by resolution of the county legislative authority or in writing by a county official or employee of the county who is designated by ordinance of the county to make such approvals.

Where part of a single parcel of land is located within the boundaries of one city, and the remainder of the parcel is located within the boundaries of a second city that is located immediately adjacent to the first city, the boundaries of the two cities may be adjusted so that all of the parcel is located within either of the cities, if the adjustment was requested in a petition signed by the property owner and is approved by both cities. Approval by a city may be through either resolution of its city council, or in writing by an official or employee of the city who has been designated by ordinance of the city to make such approvals. Such an adjustment is not subject to potential review by the boundary review board of the county in which the parcel is located.

Whenever a portion of a public right of way is located on such a parcel, the boundary adjustment shall be made in such a manner as to include all or none of that portion of the public right of way within the boundaries of the city.

As used in this section, "city" shall include any city or town, including a code city.

NEW SECTION. Sec. 25. A new section is added to chapter 35.02 RCW to read as follows:

Actions taken under chapter 35.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 26. A new section is added to chapter 35.07 RCW to read as follows:

Actions taken under chapter 35.07 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 27. A new section is added to chapter 35.10 RCW to read as follows:

Actions taken under chapter 35.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 28. A new section is added to chapter 35.13 RCW to read as follows:

Actions taken under chapter 35.13 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 29. A new section is added to chapter 35.16 RCW to read as follows:

Actions taken under chapter 35.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 30. A new section is added to chapter 35.43 RCW to read as follows:

The creation of a local improvement district outside of the boundaries of a city or town to provide water or sewer facilities may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 31. A new section is added to chapter 35.61 RCW to read as follows:

The creation of a metropolitan park district, and an annexation by, or dissolution or disincorporation of, a metropolitan park district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 32. A new section is added to chapter 35.67 RCW to read as follows:

The extension of sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 33. A new section is added to chapter 35.91 RCW to read as follows:

The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 34. A new section is added to chapter 35.92 RCW to read as follows:

The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 35. A new section is added to chapter 35A.02 RCW to read as follows:

Actions taken under chapter 35A.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 36. A new section is added to chapter 35A.03 RCW to read as follows:

Actions taken under chapter 35A.03 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 37. A new section is added to chapter 35A.05 RCW to read as follows:

Actions taken under chapter 35A.05 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 38. A new section is added to chapter 35A.14 RCW to read as follows:

Actions taken under chapter 35A.14 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 39. A new section is added to chapter 35A.15 RCW to read as follows:

Actions taken under chapter 35A.15 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 40. A new section is added to chapter 35A.16 RCW to read as follows:

Actions taken under chapter 35A.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 41. A new section is added to chapter 52.02 RCW to read as follows:

Actions taken under chapter 52.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 42. A new section is added to chapter 52.04 RCW to read as follows:

Actions taken under chapter 52.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 43. A new section is added to chapter 52.06 RCW to read as follows:

Actions taken under chapter 52.06 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 44. A new section is added to chapter 52.08 RCW to read as follows:

Actions taken under chapter 52.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 45. A new section is added to chapter 52.10 RCW to read as follows:

Actions taken under chapter 52.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 46. A new section is added to chapter 53.48 RCW to read as follows:

The dissolution of a metropolitan park district, fire protection district, sewer district, water district, or flood control zone district under chapter 53.48 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 47. A new section is added to chapter 54.08 RCW to read as follows:

Actions taken under chapter 54.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION, Sec. 48. A new section is added to chapter 54.16 RCW to read as follows:

The provision of water service beyond the boundaries of a public utility district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 49. A new section is added to chapter 54.32 RCW to read as follows:

Actions taken under chapter 54.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 50. A new section is added to chapter 56.04 RCW to read as follows:

Actions taken under chapter 56.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 51. A new section is added to chapter 56.08 RCW to read as follows:

The provision of sewer service beyond the boundaries of a sewer district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 52. A new section is added to chapter 56.24 RCW to read as follows:

Actions taken under chapter 56.24 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 53. A new section is added to chapter 56.28 RCW to read as follows:

Actions taken under chapter 56.28 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 54. A new section is added to chapter 56.32 RCW to read as follows:

Actions taken under chapter 56.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 55. A new section is added to chapter 56.36 RCW to read as follows:

Actions taken under chapter 56.36 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 56. A new section is added to chapter 57.04 RCW to read as follows:

Actions taken under chapter 57.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 57. A new section is added to chapter 57.08 RCW to read as follows:

The provision of water service beyond the boundaries of a water district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 58. A new section is added to chapter 57.24 RCW to read as follows:

Actions taken under chapter 57.24 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 59. A new section is added to chapter 57.28 RCW to read as follows:

Actions taken under chapter 57.28 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 60. A new section is added to chapter 57.32 RCW to read as follows:

Actions taken under chapter 57.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 61. A new section is added to chapter 57.36 RCW to read as follows:

Actions taken under chapter 57.36 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 62. A new section is added to chapter 57.40 RCW to read as follows:

Actions taken under chapter 57.40 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 63. A new section is added to chapter 57.90 RCW to read as follows:

Actions taken under chapter 57.90 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 64. A new section is added to chapter 85.38 RCW to read as follows:

The establishment of a drainage district, drainage improvement district, or drainage or diking improvement district may be subject to potential review by a boundary review board under chapter 36.93 RCW. Annexations, consolidations, or transfers of territory by a drainage district, drainage improvement district, or drainage or diking improvement district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 65. A new section is added to chapter 86.15 RCW to read as follows:

The creation of a flood control zone district may be subject to potential review by a boundary review board under chapter 36.93 RCW. Extensions of service outside of the boundaries of a flood control zone district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 66. A new section is added to chapter 87.03 RCW to read as follows:

The formation of an irrigation district may be subject to potential review by a boundary review board under chapter 36.93 RCW. The alteration of the boundaries of an irrigation district, including but not limited to a

consolidation, addition of lands, exclusion of lands, or merger, may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 67. A new section is added to chapter 87.52 RCW to read as follows:

Actions taken under chapter 87.52 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 68. A new section is added to chapter 87.53 RCW to read as follows:

Actions taken under chapter 87.53 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 69. A new section is added to chapter 87.56 RCW to read as follows:

Actions taken under chapter 87.56 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

NEW SECTION. Sec. 70. A new section is added to chapter 35.21 RCW to read as follows:

A city or town may provide factual information on the effects of a proposed boundary change on the city or town and the area potentially affected by the boundary change. A statement that the city or town has such information available, and copies of any printed materials or information available to be provided to the public shall be filed with the boundary review board for the board's information.

NEW SECTION. Sec. 71. The following acts or parts of acts are each repealed:

(1) Section 5, chapter 189, Laws of 1967, section 1, chapter 98, Laws of 1967 ex. sess., section 2, chapter 111, Laws of 1969 ex. sess. and RCW 36.93.050; and

(2) Section 6, chapter 189, Laws of 1967, section 3, chapter 111, Laws of 1969 ex. sess. and RCW 36.93.060.

Passed the Senate April 7, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 20, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 20, 1989.

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

"I am returning herewith, without my approval as to sections 1 and 2, Substitute Senate Bill No. 5127, entitled:

"AN ACT Relating to boundary review boards."

Sections 1 and 2 of Substitute Senate Bill No. 5127 would eliminate the authority of boundary review boards to disapprove a proposed city or town incorporation or disincorporation.

I recognize there are some communities in the state that are dissatisfied with recent incorporation decisions of boundary review boards. However, I am not convinced that the answer to this problem is simply to eliminate the board's authority in this critical area. One of the purposes of Chapter 36.93, which created boundary review boards, was to provide a method to guide and control the creation and growth of municipalities in metropolitan areas. By deleting the boards' authority over incorporations, the purpose of this act would be frustrated.

The State has a legitimate interest in ensuring that municipal boundaries are rational and that statutory objectives are adhered to in the incorporation process. The authority of boundary review boards to review and act on incorporations is the established method of achieving that goal. Without such authority, there is some risk of proliferation of small municipalities and governmental fragmentation at the local level. Additionally, annexations often need to be amended to ensure they do not just include the property tax rich area while excluding poorer valuation residential areas which require public services.

Neighboring jurisdictions are usually affected directly by municipal incorporations. Review of these actions by boundary review boards ensures that multi-jurisdictional issues are considered before a vote is taken.

Notwithstanding the concerns with sections 1 and 2 of the bill, I recognize that boundary review boards may not be the best approach for all counties to address these important growth issues. For that reason, I requested legislation this session (House Bill No. 1174) that would provide a mechanism for the dissolution of boundary review boards if a local government service agreement is in place. That bill has not yet been acted upon by the Legislature.

With the exception of sections 1 and 2, Substitute Senate Bill No. 5127 is approved."

CHAPTER 85

[Senate Bill No. 5156]

CEDAR RIVER SOCKEYE SALMON ENHANCEMENT PROJECT

AN ACT Relating to Cedar river sockeye salmon; adding new sections to chapter 75.52 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature hereby designates the Cedar river sockeye salmon enhancement project as a "Washington state centennial salmon venture."

NEW SECTION. Sec. 2. The legislature recognizes that King county has a unique urban setting for a recreational fishery and that Lake Washington and the rivers flowing into it should be developed for greater salmon production. A Lake Washington fishery is accessible to fifty percent of the state's citizens by automobile in less than one hour. There has been extensive sockeye fishing success in Lake Washington, primarily from fish originating in the Cedar river. The legislature intends to enhance the Cedar river fishery by active state and local management and intends to maximize the Lake Washington sockeye salmon runs for recreational fishing for all of the citizens of the state. A sockeye enhancement program could produce two to three times the current numbers of returning adults. A sockeye enhancement project would increase the public's appreciation of our state's

fisheries, would demonstrate the role of a clean environment, and would show that positive cooperation can exist between local and state government in planning and executing programs that directly serve the public. A spawning channel in the Cedar river has been identified as an excellent way to enhance the Lake Washington sockeye run. A public utility currently diverting water from the Cedar river for beneficial public use has expressed willingness to fund the planning, design, evaluation, construction, and operation of a spawning channel on the Cedar river.

NEW SECTION. Sec. 3. A salmon spawning channel shall be constructed on the Cedar river with the assistance and cooperation of the state department of fisheries. The department shall use existing personnel and the volunteer fisheries enhancement program outlined under chapter 75.52 RCW to assist in the planning, construction, and operation of the spawning channel.

NEW SECTION. Sec. 4. The department of fisheries shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department of fisheries, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in section 6 of this act. The technical committee will be guided by a policy committee, also to be chaired by the department of fisheries, which shall consist of not more than six members: One representative from the department of fisheries, one from the Muckleshoot Indian tribe, and one from either the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in section 6 of this act. The policy committee shall present a progress report to the senate and house of representatives natural resources and environment committees by January 1, 1990, and shall oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the production goals specified in section 5 of this act.

NEW SECTION. Sec. 5. The channel shall be designed to produce, at a minimum, fry comparable in quality to those produced in the Cedar river and equal in number to what could be produced naturally by the estimated two hundred sixty-two thousand adults that could have spawned upstream of the Landsburg diversion. Construction of the spawning channel shall commence no later than September 1, 1990. Initial construction size shall be adequate to produce fifty percent or more of the production goal specified in this section.

NEW SECTION. Sec. 6. The legislature recognizes that, if funding for planning, design, evaluation, construction, and operating expenses is

provided by a public utility that diverts water for beneficial public use, and if the performance of the spawning channel meets the production goals described in section 5 of this act, the spawning channel project will serve, at a minimum, as compensation for lost sockeye salmon spawning habitat upstream of the Landsburg diversion. The amount of funding to be supplied by said utility will fully fund the total cost of planning, design, evaluation, and construction of the spawning channel.

NEW SECTION. Sec. 7. In order to provide operation and maintenance funds for the facility authorized by this act, the utility shall place two million five hundred thousand dollars in the state general fund Cedar river channel construction and operation account herein created. The interest from the fund shall be used for operation and maintenance of the spawning channel and any unused interest shall be added to the fund to increase the principal to cover possible future operation cost increases. The state treasurer may invest funds from the account as provided by law.

***NEW SECTION.** Sec. 8. *The state department of fisheries, the state department of ecology, all other state agencies, and local governments shall expedite all required permits for construction and operation of the spawning channel.*

*Sec. 8 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 9. The legislature hereby declares that the construction of the Cedar river sockeye spawning channel is in the best interests of the state of Washington.

NEW SECTION. Sec. 10. Should the requirements of this act not be met, the department of fisheries shall seek immediate legal clarification of the steps which must be taken to fully mitigate water diversion projects on the Cedar river.

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. *This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.*

*Sec. 12 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 13. Sections 3 through 9 of this act are each added to chapter 75.52 RCW.

Passed the Senate February 15, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 20, 1989.

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

"I am returning herewith, without my approval as to sections 8 and 12, Senate Bill No. 5156, entitled:

"AN ACT Relating to Cedar River sockeye salmon."

The concept behind this bill is to provide a mechanism to mitigate for the sockeye salmon habitat losses caused by the Landsburg diversion dam. Embodied in the concept of mitigation is that the complete cost, including the long-term operation and maintenance of the mitigation project, shall be borne by the party with the responsibility to mitigate. In this case, the City of Seattle has agreed not only to fund all phases leading up to and including construction, but also to deposit \$2.5 million in a trust account so that interest can be used to fund operation and maintenance.

The acceptability of this project to the State to fully mitigate for the sockeye losses caused by the diversion dam shall be judged not only on the success of the spawning channel but also on whether the trust account is adequate to fully finance the long-term operation and maintenance of the channel. It is in the best interest of the City of Seattle to negotiate with the State on methods which could reduce the expenditures from this trust account, so that in the future the fund is sufficient to cover inflationary costs as well as unanticipated costs.

I feel strongly that the decision-making process leading up to the construction of the spawning channel must recognize the relationship between the State and the Muckleshoot Tribe. The process must involve the Tribe in the planning, design, construction and operation of the spawning channel. This project can proceed only so long as consistent with the protection of treaty fishing rights. Finally, it should be noted that any decision made by the State pursuant to this legislation does not affect claims the Muckleshoot Tribe may have against the City of Seattle for damages to the Cedar River fisheries resources.

The expedition of permits in section 8 implies that state agencies are somehow above the permitting processes. This policy sends an inappropriate message that the review should be preferential or incomplete. The emergency clause in section 12 is not warranted by any exigent circumstances.

I believe this legislation, with the exception of sections 8 and 12, is an example of a process, that if successful, will enhance fishing opportunities in this state and will address a current impediment to increasing the Cedar River sockeye run.

Therefore, with the exception of sections 8 and 12, Senate Bill No. 5156 is approved."

CHAPTER 86

[Senate Bill No. 6012]

SCHOOLS—REVENUES DERIVED FROM REAL PROPERTY—DEPOSIT

AN ACT Relating to the leasing of surplus school property; and amending RCW 28A-58.033 and 28A.58.035.

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

***Sec. 1. Section 2, chapter 115, Laws of 1980 as amended by section 2, chapter 306, Laws of 1981 and RCW 28A.58.033 are each amended to read as follows:**

(1) Every school district board of directors is authorized to permit the rental, lease, or occasional use of all or any portion of any surplus real property owned or lawfully held by the district to any person, corporation, or government entity for profit or nonprofit, commercial or noncommercial purposes: PROVIDED, That the leasing or renting or use of such property is for a lawful purpose, is in the best interest of the district, and does not interfere with conduct of the district's educational program and related activities(~~:(PROVIDED FURTHER, That the lease or rental agreement entered into shall include provisions which permit the recapture of the leased or rented surplus property of the district should such property be needed for school purposes in the future)~~).

(2) Authorization to rent, lease or permit the occasional use of surplus school property under this section, RCW 28A.58.034 and 28A.58.040, each as now or hereafter amended, is conditioned on the establishment by each school district board of directors of a policy governing the use of surplus school property.

(3) The board of directors of any school district desiring to rent or lease any surplus real property owned by the school district shall send written notice to the office of the state superintendent of public instruction. School districts shall not rent or lease the property for at least forty-five days following the date notification is mailed to the state superintendent of public instruction.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the rental or lease of surplus real property and to have such bids considered along with all other bids: PROVIDED, That the school board may establish reasonable conditions for the use of such real property to assure the safe and proper operation of the property in a manner consistent with board policies.

***Sec. 1 was vetoed, see message at end of chapter.**

Sec. 2. Section 4, chapter 115, Laws of 1980 as last amended by section 15, chapter 59, Laws of 1983 and RCW 28A.58.035 are each amended to read as follows:

Each school district's board of directors shall deposit moneys derived from the lease, rental or occasional use of surplus school property as follows:

(1) Moneys derived from real property shall be deposited into the district's debt service fund and/or capital projects fund except for moneys required to be expended for general maintenance, utility, insurance costs, and any other costs associated with the lease or rental of such property, which moneys shall be deposited in the district's general fund;

(2) Moneys derived from pupil transportation vehicles shall be deposited in the district's transportation vehicle fund;

(3) Moneys derived from other personal property shall be deposited in the district's general fund.

Passed the Senate April 11, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 20, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 20, 1989.

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

"I am returning herewith, without my approval as to section 1, Senate Bill No. 6012, entitled:

"AN ACT Relating to the leasing of surplus school property."

Section 1 of this bill would remove the restriction requiring school districts to include provisions which permit the recapture of the leased or rented surplus property of the district should such property be needed for school purposes in the future." The stated intent of this bill is to clarify the law so school districts can enter into long-term leases of surplus property to be used for condominiums or office buildings.

The restriction in existing law is good public policy. It should not be repealed. We should not be encouraging school districts to be in the real estate business when there are current demands for school district buildings and funding of school projects.

Each year the Legislature struggles with providing enough capital funding to school districts to keep up with demands for new construction. It seems inconsistent to allow districts to lock up buildings and property in long-term leases, when there is apparently no intent nor ability to ever reclaim these for school purposes. If there is no foreseeable school use, the district should surplus and sell the properties so the funds are available for other district uses.

The existing statute provides enough flexibility so school districts can rent or lease property when it is not needed immediately. However, the existing law wisely prohibits long-term commitments which bind future school boards and limit their ability to meet the changing needs of the community.

With the exception of section 1, Senate Bill No. 6012 is approved."

CHAPTER 87

[Second Substitute Senate Bill No. 5011]

ALLOCATION OF ASSETS BETWEEN INSTITUTIONALIZED AND COMMUNITY SPOUSE

AN ACT Relating to the prevention of impoverishment of spouses of institutionalized persons; amending RCW 11.94.050, 74.09.510, and 74.09.700; adding new sections to chapter 74.09 RCW; creating a new section; repealing RCW 74.09.532, 74.09.534, 74.09.536, and 74.09.538; providing effective dates; and declaring an emergency.

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

Sec. 1. Section 29, chapter 30, Laws of 1985 and RCW 11.94.050 are each amended to read as follows:

(1) Although a designated attorney in fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal

would have if alive and competent, the attorney in fact or agent shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's wills, codicils, life insurance beneficiary designations, employee benefit plan beneficiary designations, trust agreements, community property agreements; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney in fact or agent from making any transfer of resources not prohibited under ~~((RCW 74.09.532))~~ chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

Sec. 2. Section 4, chapter 30, Laws of 1967 ex. sess. as last amended by section 2, chapter 5, Laws of 1985 and RCW 74.09.510 are each amended to read as follows:

Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services, ~~((including the prohibition under RCW 74.09.532 through 74.09.536 against the knowing and wilful assignment of property or cash for the purpose of qualifying for such assistance;))~~ as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for aid to families with dependent children, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) an intermediate care facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized; (4) individuals who would be eligible for but choose not to receive cash assistance; (5) pregnant women who would be eligible for aid to families with dependent children if the child had been born and was living with the mother during the month of the payment, and the pregnancy has been medically verified; (6) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act; and (7) other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act.

Sec. 3. Section 22, chapter 6, Laws of 1981 1st ex. sess. as last amended by section 4, chapter 5, Laws of 1985 and RCW 74.09.700 are each amended to read as follows:

(1) To the extent of available funds, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with medical eligibility requirements established by the department. This includes residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only inpatient hospital services; outpatient hospital and rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; skilled nursing home services, intermediate care facility services, and intermediate care facility services for the mentally retarded; home health services; other laboratory and x-ray services; rehabilitative services; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act shall be covered;

(b) Persons who are medically indigent and are not eligible for a federal aid program shall satisfy a deductible of not less than one hundred dollars nor more than five hundred dollars in any twelve-month period;

(c) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. ~~((In addition, the department shall include a prohibition against the knowing and wilful assignment of property or cash for the purpose of qualifying for assistance under RCW 74.09.532 through 74.09.536:))~~

NEW SECTION. Sec. 4. A new section is added to chapter 74.09 RCW to read as follows:

MEDICAL ASSISTANCE FOR INSTITUTIONALIZED PERSONS—TREATMENT OF INCOME BETWEEN SPOUSES. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act.

NEW SECTION. Sec. 5. A new section is added to chapter 74.09 RCW to read as follows:

MEDICAL ASSISTANCE FOR INSTITUTIONALIZED PERSONS—TREATMENT OF RESOURCES. (1) The department shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department shall allow the maximum resource allowance amount permissible under the social security act for the community spouse.

***NEW SECTION.** Sec. 6. A new section is added to chapter 74.09 RCW to read as follows:

The department shall, on December 15 of each even-numbered year, submit to the fiscal committees of the senate and the house of representatives a report covering the utilization and state and federal expenditures resulting from implementation of sections 4, 5, and 7 of this act. This report shall include the number of families affected by the provisions of these sections, the

average amount of the income and resources transferred and the state and federal funds provided for the care of the institutionalized spouse.

***Sec. 6 was vetoed, see message at end of chapter.**

NEW SECTION. Sec. 7. A new section is added to chapter 74.09 RCW to read as follows:

MEDICAL ASSISTANCE FOR INSTITUTIONALIZED PERSONS—PERIOD OF INELIGIBILITY FOR TRANSFER OF RESOURCES. (1) The department shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) The department may waive a period of ineligibility if the department determines that denial of eligibility would work an undue hardship.

NEW SECTION. Sec. 8. A new section is added to chapter 74.09 RCW to read as follows:

MEDICAL ASSISTANCE—DUE PROCESS PROCEDURES. The department shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance.

NEW SECTION. Sec. 9. (1) Sections 7 and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

(2) Sections 1 through 5 of this act shall take effect October 1, 1989.

NEW SECTION. Sec. 10. Section captions, as found in sections 4 through 8 of this act, constitute no part of the law.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 3, Laws of 1981 2nd ex. sess. and RCW 74.09-.532;

(2) Section 2, chapter 3, Laws of 1981 2nd ex. sess. and RCW 74.09-.534;

(3) Section 3, chapter 3, Laws of 1981 2nd ex. sess. and RCW 74.09-.536; and

(4) Section 4, chapter 3, Laws of 1981 2nd ex. sess., section 41, chapter 75, Laws of 1987 and RCW 74.09.538.

Passed the Senate April 10, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 20, 1989.

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

"I am returning herewith, without my approval as to section 6, Second Substitute Senate Bill No. 5011, entitled:

"AN ACT Relating to providing for allocation of assets of an institutionalized spouse."

Section 6 requires the submission of a biennial report on the number of persons impacted by the laws relating to transfer of assets between spouses. This section imposes new duties for which no funds have been appropriated, and would require the Department of Social and Health Services to reformat information already available to the legislative fiscal committees.

With the exception of section 6, Second Substitute Senate Bill No. 5011 is approved."

CHAPTER 88

[Senate Bill No. 5353]

DISABLED LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS— CONTINUED SERVICE CREDIT

AN ACT Relating to continued service credit for disabled law enforcement officers and fire fighters; amending RCW 41.26.470 and 41.26.520; and adding a new section to chapter 41.26 RCW.

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

Sec. 1. Section 8, chapter 294, Laws of 1977 ex. sess. as last amended by section 2, chapter 12, Laws of 1982 and RCW 41.26.470 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-eight.

(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 ~~((34.04))~~ 34.05 RCW ~~((, as now or hereafter amended))~~.

(3) Those members subject to this chapter who became disabled in the line of duty on or after the effective date of this 1989 section, 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 41.26.450.

(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.

Sec. 2. Section 13, chapter 294, Laws of 1977 ex. sess. and RCW 41.26.520 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner: PROVIDED, That for the purpose of this subsection the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.26.450. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(3) A member who is inducted into the armed forces of the United States shall be deemed to be on an unpaid, authorized leave of absence.

(4) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

NEW SECTION. Sec. 3. A new section is added to chapter 41.26 RCW to read as follows:

A member who became disabled before the effective date of this section may receive service credit for such period of disability subject to all the limitations and conditions contained in RCW 41.26.470(3). In order to qualify for the service credit provided by this section the member must make application to the department no later than December 31, 1991, and must agree to allow the employer to withhold from the member's wages the employee contributions, with interest, as required under RCW 41.26.470(3).

Passed the Senate March 3, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 89

[Second Substitute Senate Bill No. 5111]

PRISONERS—WORK RELEASE PROGRAM

AN ACT Relating to work training release; and adding a new section to chapter 72.65 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 72.65 RCW to read as follows:

(1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

(a) Conduct an annual examination of each work release facility and its security procedures;

(b) Investigate and set standards for the inmate supervision policies of each work release facility;

(c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;

(d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) Report to the legislature on a case management procedure to evaluate and determine those inmates on work release who are in need of treatment. The department shall establish in the report a written treatment plan best suited to the inmate's needs, cost, and the relationship of community

placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990.

Passed the Senate April 11, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 90

[Substitute Senate Bill No. 5234]

CHILD AND ADULT ABUSE INFORMATION

AN ACT Relating to child and adult abuse information; and amending RCW 43.43.830, 43.43.832, 43.43.834, 43.43.838, and 43.43.840.

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

Sec. 1. Section 1, chapter 486, Laws of 1987 and RCW 43.43.830 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means either:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons during the course of his or her employment or involvement with the business or organization. However, for school districts and educational service districts, prospective employee includes only noncertificated personnel; or

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age or developmentally

disabled persons during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, or (iii) developmentally disabled persons.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, or provides recreation to developmentally disabled persons or children under sixteen years of age, including school districts and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.030(2)(b) or in a domestic relations action under Title 26 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means (~~criminal history~~) "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following business or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Drugless healing;
- (e) Massage;
- (f) Midwifery;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(6) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree rape; first, second, or third degree statutory rape; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; or any of these crimes as they may be renamed in the future.

(7) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization.

Sec. 2. Section 2, chapter 486, Laws of 1987 and RCW 43.43.832 are each amended to read as follows:

(1) The legislature finds that businesses and organizations providing services to children or developmentally disabled persons need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system may disclose, upon the request of a business or organization as defined in RCW 43.43.830, a prospective employee's record for convictions of offenses against children or other persons, adjudications of child abuse in a civil action, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision. When necessary, applicants may be employed on a conditional basis pending completion of such a background investigation.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child and adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services, when considering persons for state positions directly responsible for the care, supervision, or treatment of children or the developmentally disabled or when licensing or authorizing such persons or agencies pursuant to its authority under chapter 74.15 RCW, must consider the information listed in subsection (1) of this section. However, when necessary, persons may be employed on a conditional basis pending completion of the background investigation. The state personnel board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

Sec. 3. Section 3, chapter 486, Laws of 1987 and RCW 43.43.834 are each amended to read as follows:

(1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Found in any dependency action under RCW 13.34.030(2)(b) to have sexually assaulted or exploited any minor or to have physically abused any minor;

(c) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor; or

(d) Found in any disciplinary board final decision to have sexually abused or exploited any minor or to have physically abused any minor.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons as defined in RCW 43.43.830.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or

use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

Sec. 4. Section 5, chapter 486, Laws of 1987 and RCW 43.43.838 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, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication 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; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15 RCW. 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).

After processing the request, if the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or adjudication record shows no evidence of a crime against children or other persons, an identification declaring the showing of no evidence shall be issued to the applicant by the state patrol and shall be issued within fourteen working days of the request. Possession of such identification shall satisfy future background check requirements for the applicant for a two-year period.

(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 fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records: PROVIDED, That no fee shall be

charged to a nonprofit organization, including school districts and educational service districts, for the records check.

(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 RCW 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.

Sec. 5. Section 6, chapter 486, Laws of 1987 and RCW 43.43.840 are each amended to read as follows:

(1) The supreme court shall by rule require the courts of the state to notify the state patrol of any dependency action under RCW 13.34.030(2)(b) or domestic relations action under Title 26 RCW in which the court makes specific findings of physical abuse or sexual abuse or exploitation of a child.

(2) The department of licensing shall notify the state patrol of any disciplinary board final decision that includes specific findings of physical abuse or sexual abuse or exploitation of a child.

(3) When a business or an organization terminates, fires, dismisses, fails to renew the contract, or permits the resignation of an employee because of crimes against children or other persons, and if that employee is employed in a position requiring a certificate or license issued by a licensing agency such as the state board of education, the business or organization shall notify the licensing agency of such termination of employment.

Passed the Senate April 10, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 91

[Senate Bill No. 5590]

VOLUNTEER FIREFIGHTERS—PENSION AND RELIEF FUND

AN ACT Relating to firefighters; amending RCW 41.24.030, 41.24.150, 41.24.160, 41.24.170, 41.24.180, 41.24.010, 41.24.020, 41.24.040, 41.24.050, 41.24.080, 41.24.110, 41.24.140, 41.24.175, 41.24.190, 41.24.200, 41.24.210, 41.24.220, 41.24.230, 41.24.240, 41.24.250, 41.24.290, and 41.24.310; adding new sections to chapter 41.24 RCW; repealing RCW 41.24.031; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 3, chapter 261, Laws of 1945 as last amended by section 4, chapter 296, Laws of 1986 and RCW 41.24.030 are each amended to read as follows:

There is created in the state treasury a trust fund for the benefit of the ~~((firemen))~~ firefighters of the state covered by this chapter, which shall be designated the volunteer ~~((firemen's))~~ firefighters' relief and pension fund and shall consist of:

(1) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(2) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as herein provided as follows:

(a) ~~((Three))~~ Ten dollars for each volunteer or part-paid member of its fire department;

(b) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(3) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as herein provided, an annual fee of thirty dollars for each of its ~~((firemen))~~ firefighters electing to enroll therein, ten dollars of which shall be paid by the municipality and twenty dollars of which shall be paid by the ~~((fireman))~~ firefighter.

(4) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the fund.

(5) The state investment board, upon request of the state treasurer shall have full power to invest or reinvest such portion of the amounts credited to the fund as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments ~~((may))~~ shall be made in ~~((such bonds, notes or other obligations now or hereafter authorized as an investment for the funds of the public employees' retirement system))~~ the manner prescribed by RCW 43.84.150 and not otherwise.

(6) All bonds or other obligations purchased according to subsection (5) of this section shall be forthwith placed in the custody of the state treasurer, and he shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund shall be credited to and form a part of the fund.

All amounts credited to the fund shall be available for making the payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

Sec. 2. Section 15, chapter 261, Laws of 1945 as last amended by section 10, chapter 185, Laws of 1987 and RCW 41.24.150 are each amended to read as follows:

Whenever a ~~((fireman))~~ firefighter serving in any capacity as a member of ~~((his))~~ the firefighter's own fire department subject to the provisions of this chapter becomes physically or mentally disabled, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the fund monthly, the sum of one thousand ~~((two hundred))~~ six hundred fifty dollars for a period of not to exceed six months, or ~~((forty))~~ fifty-five dollars per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of ~~((six hundred))~~ eight hundred twenty-five dollars so long as the disability continues, except as hereinafter provided: PROVIDED, That if the member has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of one hundred ~~((twenty))~~ sixty-five dollars because of the fact of his wife or her husband, and ~~((fifty))~~ seventy dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of one thousand ~~((two hundred))~~ six hundred fifty dollars. The board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the

annual income received by the pensioner at the time of his disability: PROVIDED, That where a ~~((fireman))~~ firefighter sustains a permanent partial disability the state board may provide that such injured ~~((fireman))~~ firefighter shall receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments.

Sec. 3. Section 16, chapter 261, Laws of 1945 as last amended by section 2, chapter 163, Laws of 1986 and RCW 41.24.160 are each amended to read as follows:

(1) Whenever a ~~((fireman))~~ firefighter dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment of the sum of two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her parents or either of them, and the sum of ~~((six hundred))~~ eight hundred twenty-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of ~~((fifty))~~ seventy dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of one thousand ~~((two hundred))~~ six hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased ~~((fireman))~~ firefighter or if, after the death of the ~~((fireman))~~ firefighter, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are children, unemancipated or under eighteen years of age, then the amount of ~~((six hundred))~~ eight hundred twenty-five dollars per month shall be paid for the youngest or only child together with an additional ~~((fifty))~~ seventy dollars per month for each additional of such children to a maximum of one thousand ~~((two hundred))~~ six hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of ~~((six hundred))~~ eight hundred twenty-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their

support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children, or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the ~~((value of the annuity then remaining, to be fixed and certified by the state insurance commissioner,))~~ actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is hereby given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section.

Sec. 4. Section 17, chapter 261, Laws of 1945 as last amended by section 4, chapter 21, Laws of 1981 and RCW 41.24.170 are each amended to read as follows:

Whenever any ~~((fireman))~~ firefighter has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized volunteer fire department of any municipality in this state, and which municipality and ~~((fireman))~~ firefighter are enrolled under the retirement provisions, and the ~~((fireman))~~ firefighter has reached the age of sixty-five years, the board of trustees shall order and direct that he be retired and be paid a monthly pension as provided in this section.

Whenever a ~~((fireman))~~ firefighter has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such ~~((fireman))~~ firefighter be paid a monthly pension of two hundred dollars from the fund for the balance of ~~((his))~~ that firefighter's life.

Whenever any ~~((fireman))~~ firefighter has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department of any

municipality in this state, and the ~~((fireman))~~ firefighter has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such ~~((fireman))~~ firefighter shall receive a minimum monthly pension of twenty-five dollars increased by the sum of seven dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension herein provided, for the balance of ~~((his))~~ the firefighter's life.

No pension herein provided may become payable before the sixty-fifth birthday of the ~~((fireman))~~ firefighter, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any ~~((fireman))~~ firefighter, upon completion of twenty-five years' service and attainment of age sixty, may irrevocably elect, in lieu of the pension to which ~~((he))~~ that firefighter would be entitled hereunder at age sixty-five, to receive for the balance of his or her life a monthly pension equal to sixty percent of such pension.

(2) Any ~~((fireman))~~ firefighter, upon completion of twenty-five years' service and attainment of age sixty-two, may irrevocably elect, in lieu of the pension to which ~~((he))~~ that firefighter would be entitled hereunder at age sixty-five, to receive for the balance of his or her life a monthly pension equal to seventy-five percent of such pension.

(3) Any ~~((fireman))~~ firefighter, upon completion of less than twenty-five years of service shall receive the applicable reduced pension provided below, according to the age at which ~~((he))~~ that firefighter elects to begin to receive the pension. If receipt of the benefits begins at age sixty-five ~~((he))~~ the firefighter shall receive one hundred percent of the reduced benefit; at age sixty-two ~~((he))~~ the firefighter shall receive seventy-five percent of the reduced benefit; and at age sixty ~~((he))~~ the firefighter shall receive sixty percent of the reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to fifteen percent of such pension as ~~((he))~~ the firefighter would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty percent of such pension as ~~((he))~~ the firefighter would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to sixty percent of such pension as ~~((he))~~ the firefighter would have been entitled to receive at age sixty-five after twenty-five years of service.

~~((4)) Any monthly pension, payable to any fireman, which will not, under the provisions of this section, amount to twenty-five dollars, may be~~

~~converted into a lump sum payment to the value of the annuity then remaining, as fixed and certified by the state insurance commissioner. Such conversion may be made either upon written application to the state board and shall rest at the discretion of the state board, or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as herein provided:))~~

Sec. 5. Section 1, chapter 26, Laws of 1974 ex. sess. as amended by section 3, chapter 76, Laws of 1975-'76 2nd ex. sess. and RCW 41.24.180 are each amended to read as follows:

The board of trustees of any municipal corporation shall direct payment ~~((in lump sums))~~ from said fund in the following cases:

(1) To any volunteer ~~((fireman))~~ firefighter, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension herein provided and who was enrolled in said fund and on whose behalf annual fees for retirement pension were paid, ~~((an))~~ a lump sum amount equal to the amount paid ~~((by himself or herself))~~ into the fund by the firefighter.

(2) ~~((If any fireman dies before attaining the age at which a pension shall be payable to him or her under the provisions of this chapter, there shall be paid to his widow or her widower, or if there be no widow or widower to his or her child or children, or if there be no widow or widower or child or children then to his or her heirs at law as may be determined by the board of trustees or to his or her estate if it be administered and there be no heirs as above determined, an amount equal to the amount paid into said fund by himself or herself:~~

~~((3) If any fireman dies after beginning to receive the pension provided for in this chapter, and before receiving an amount equal to the amount paid by himself or herself and the municipality or municipalities in whose department he or she shall have served, there shall be paid to his widow or her widower, or if there be no widow or widower then to his or her child or children, or if there be no widow or widower or child or children then to his or her heirs at law as may be determined by the board of trustees, or to his or her estate if it be administered and there be no heirs as above determined, an amount equal to the difference between the amount paid into said fund by himself or herself and the municipality or municipalities in whose department he or she shall have served and the amount received by him or her as a pensioner))~~ If any firefighter who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (4) of this section, there shall be paid to the firefighter's surviving spouse, or if there be no surviving spouse, then to such firefighter's

legal representatives, a lump sum amount equal to the amount paid into the fund by the firefighter. If any firefighter who has completed at least ten years of service dies other than as the result of injuries received or sickness contracted in consequence or as the result of the performance of his or her duties, without having requested a lump sum payment under subsection (1) or (4) of this section and before beginning to receive the monthly pension provided for in this chapter, the firefighter's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of section 6 of this act and further actuarially reduced to reflect the difference in the number of years between the firefighter's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the fund by the firefighter and the municipality or municipalities in whose department he or she has served.

If there be no such surviving spouse, then there shall be paid to the firefighter's legal representatives a lump sum amount equal to the amount paid into the fund by the firefighter.

(4) If any volunteer ((fireman)) firefighter retires from the fire service before attaining the age of sixty-five years, ((he or she)) the firefighter may make application for the return in a lump sum of the amount paid into ((said)) the fund by himself or herself.

NEW SECTION. Sec. 6. A new section is added to chapter 41.24 RCW to read as follows:

Before beginning to receive the pension provided for in RCW 41.24-.170, the firefighter shall elect, in a writing filed with the state board, to have the pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A firefighter electing this option shall receive a monthly pension payable throughout the firefighter's life. However, if the firefighter dies before the total pension paid to the firefighter equals the amount paid into the fund, then the balance shall be paid to the firefighter's surviving spouse, or if there be no surviving spouse, then to the firefighter's legal representatives.

(2) Option 2. A firefighter electing this option shall receive a reduced monthly pension, which upon the firefighter's death shall be continued throughout the life of and paid to the firefighter's surviving spouse named in the written election filed with the state board.

NEW SECTION. Sec. 7. A new section is added to chapter 41.24 RCW to read as follows:

Any monthly pension, payable under this chapter, which will not amount to twenty-five dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall

rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as herein provided.

Sec. 8. Section 1, chapter 261, Laws of 1945 as last amended by section 18, chapter 6, Laws of 1970 ex. sess. and RCW 41.24.010 are each amended to read as follows:

As used in this chapter:

"Municipal corporation" or "municipality" includes any city or town, fire protection district, or any water, irrigation, or other district, authorized by law to afford protection to life and property within its boundaries from fire.

"Fire department" means any regularly organized fire department consisting wholly of volunteer (~~((firemen))~~) firefighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(~~((Firemen))~~) "Firefighter" includes any (~~((fireman))~~) firefighter who is a member of any fire department of any municipality but shall not include full time, paid (~~((fire-fighters))~~) firefighters who are members of the Washington law enforcement officers' and (~~((fire-fighters'))~~) firefighters' retirement system, with respect to periods of service rendered in such capacity.

"Performance of duty" shall be construed to mean and include any work in and about company quarters or any fire station or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; responding to, working at, or returning from an alarm of fire; drill; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department.

"State board" means the state board for volunteer (~~((firemen))~~) firefighters created herein.

"Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

Sec. 9. Section 2, chapter 261, Laws of 1945 and RCW 41.24.020 are each amended to read as follows:

(1) Every municipal corporation maintaining and operating a regularly organized fire department shall make provision by appropriate legislation for the enrollment of every (~~((fireman))~~) firefighter under the relief and compensation provisions of this chapter for the purpose of providing protection

for all its ((firemen)) firefighters and their families from death or disability arising in the performance of their duties as ((firemen)) firefighters: PROVIDED, That nothing herein shall prohibit any municipality from providing such additional protection for relief and compensation, or death benefit as it may deem proper.

(2) Any municipal corporation maintaining and operating a regularly organized fire department may make provision by appropriate legislation whereby any ((fireman)) firefighter may enroll under the pension provisions of this chapter for the purpose of enabling any ((fireman)) firefighter, so electing, to avail himself or herself of the retirement provisions of this chapter.

(3) Every municipal corporation shall make provisions for the collection and payment of the fees as herein provided, and shall continue to make such provisions for all ((firemen)) firefighters who come under this chapter as long as they shall continue to be members of its fire department.

Sec. 10. Section 4, chapter 261, Laws of 1945 and RCW 41.24.040 are each amended to read as follows:

On or before the first day of March of each year, every municipal corporation shall pay such amount as shall be due from it to said fund, together with the amounts collected from the ((firemen)) firefighters of its fire department: PROVIDED, That no ((fireman)) firefighter shall forfeit his or her right to participate in the relief and compensation provisions of this chapter by reason of nonpayment: PROVIDED FURTHER, That no ((fireman)) firefighter shall forfeit his or her right to participate in the retirement provisions of this chapter until after March 1st of such year: AND PROVIDED FURTHER, That where a municipality has failed to pay or remit the annual fees required within the time provided such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid: AND PROVIDED FURTHER, That where a ((fireman)) firefighter has forfeited his or her right to participate in the retirement provisions of this chapter ((he)) that firefighter may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible.

Sec. 11. Section 5, chapter 261, Laws of 1945 as amended by section 1, chapter 67, Laws of 1975-'76 2nd ex. sess. and RCW 41.24.050 are each amended to read as follows:

Each municipal corporation shall by appropriate legislation limit the membership of its volunteer fire department to not to exceed twenty-five ((firemen)) firefighters for each one thousand population or fraction thereof: PROVIDED, That any fire department maintaining and operating an emergency first aid and ambulance service requiring emergency medical training under chapter 18.73 RCW shall be permitted to increase its membership by the number of ((firemen)) firefighters obtaining and maintaining

such qualification: PROVIDED FURTHER, That no person serving as an emergency medical technician or first aid vehicle operator under chapter 18.73 RCW shall be permitted to join the law enforcement officers' and (~~fire fighters~~) firefighters retirement system solely on the basis of such service: PROVIDED FURTHER, That in no case shall the membership of any fire department coming under the provisions of this chapter be limited to less than fifteen (~~firemen~~) firefighters.

Sec. 12. Section 8, chapter 261, Laws of 1945 as last amended by section 2, chapter 118, Laws of 1969 and RCW 41.24.080 are each amended to read as follows:

The board of trustees of each municipal corporation shall provide for enrollment of all members of its fire department under the death and disability provisions hereof; receive all applications for the enrollment under the retirement provisions hereof when the municipality has elected to enroll thereunder; provide for disbursements of relief and compensation; determine the eligibility of (~~firemen~~) firefighters for pensions; and pass on all claims and direct payment thereof from the volunteer (~~firemen's~~) firefighters' relief and pension fund to those entitled thereto. Vouchers shall be issued to the persons entitled thereto by the board. It shall send to the state board, after each meeting, a voucher for each person entitled to payment from the fund, stating the amount of such payment and for what granted, which voucher shall be certified and signed by the chairman and secretary of the board. The state board, after review and approval shall cause a warrant to be issued on the fund for the amount specified and approved on each voucher: PROVIDED, That in pension cases after the applicant's eligibility for pension is verified the state board shall authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of any such municipality.

Sec. 13. Section 11, chapter 261, Laws of 1945 as last amended by section 6, chapter 253, Laws of 1953 and RCW 41.24.110 are each amended to read as follows:

The board shall make provisions for the employment of a regularly licensed practicing physician for the examination of members of fire departments making application for membership. Such appointed physician shall visit and examine all sick and injured (~~firemen~~) firefighters, perform such services and operations and render all medical aid and care necessary for the recovery of (~~firemen~~) firefighters on account of sickness or disability received while in the performance of duties. Such appointed physician shall be paid his or her fees from said fund but not in excess of the schedule of fees for like services approved by the director of labor and industries under Title 51 RCW. No physician or surgeon, not approved by the board, shall receive or be entitled to any compensation from said fund as the private or attending physician of any (~~fireman~~) firefighter. No person shall have any right of action against the board of trustees of said fund for the negligence

of any physician or surgeon employed by it. Any physician employed by the board to attend upon any ((fireman)) firefighter shall report his or her findings in writing to said board.

Sec. 14. Section 14, chapter 261, Laws of 1945 and RCW 41.24.140 are each amended to read as follows:

Said board of trustees shall have the power and authority to ask for the appointment of a guardian whenever and wherever the claim of a ((fireman)) firefighter or his beneficiary would, in the opinion of the board, be best served thereby. The board shall have full power to make and direct the payments herein provided for to any person entitled thereto without the necessity of any guardianship or administration proceedings, when in its judgment, it shall determine it to be for the best interests of the beneficiary.

Sec. 15. Section 1, chapter 9, Laws of 1959 and RCW 41.24.175 are each amended to read as follows:

Payments to persons who are now receiving, or who may hereafter receive any disability or retirement payments under the provisions of chapter 41.24 RCW shall be computed in accordance with the last act enacted by the legislature relative thereto: PROVIDED HOWEVER, That nothing herein contained shall be construed as reducing the amount of any pension to which any ((fireman)) firefighter shall have been eligible to receive under the provisions of section 1, chapter 103, Laws of 1951.

Sec. 16. Section 19, chapter 261, Laws of 1945 as last amended by section 6, chapter 118, Laws of 1969 and RCW 41.24.190 are each amended to read as follows:

The filing of reports of enrollment shall be prima facie evidence of the service of the ((firemen)) firefighters therein listed for the year of such report as to service rendered subsequent to July 6, 1945. Proof of service of ((firemen)) firefighters prior to that date shall be by documentary evidence, or such other evidence reduced to writing and sworn to under oath, as shall be submitted to the state board and certified by it as sufficient.

Sec. 17. Section 20, chapter 261, Laws of 1945 as last amended by section 4, chapter 170, Laws of 1973 1st ex. sess. and RCW 41.24.200 are each amended to read as follows:

The aggregate term of service of any ((fireman)) firefighter need not be continuous nor need it be confined to a single fire department nor a single municipality in this state to entitle such ((fireman)) firefighter to a pension: PROVIDED, That ((he)) the firefighter has been duly enrolled in a fire department of a municipality which has elected to make provisions for the retirement of its ((firemen)) firefighters at the time he or she becomes eligible for such pension as in this chapter provided, and has paid all fees prescribed. To be eligible to the full pension a ((fireman)) firefighter must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time ((he)) the

firefighter commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department of a municipality or municipalities which have elected to make provisions for the retirement of its volunteer ((firemen)) firefighters; PROVIDED, HOWEVER, That nothing herein contained shall require any ((fireman)) firefighter having twenty-five years active service to continue as a ((fireman)) firefighter and no ((fireman)) firefighter who has completed twenty-five years of active service for which annual pension fees have been paid and who continues as a ((fireman)) firefighter shall be required to pay any additional annual pension fees.

Sec. 18. Section 21, chapter 261, Laws of 1945 as last amended by section 7, chapter 118, Laws of 1969 and RCW 41.24.210 are each amended to read as follows:

No ((fireman)) firefighter shall receive any disability pension from the fund, or be entitled to receive any relief or compensation for sickness or injuries received in the performance of his or her duties, unless there is filed with the board of trustees a report of accident, which report shall be subscribed to by the claimant, the fire chief, and the authorized attending physician, if there is one. No claim for benefits arising from sickness or injuries incurred in consequence or as a result of the performance of duties shall be allowed by the state board unless there has been filed with it a report of accident within ninety days after its occurrence and a claim based thereon within one year after the occurrence of the accident on which such claim is based. The board may require such other or further evidence as it deems advisable before ordering any relief, compensation, or pension.

Sec. 19. Section 22, chapter 261, Laws of 1945 as last amended by section 4, chapter 76, Laws of 1975-'76 2nd ex. sess. and RCW 41.24.220 are each amended to read as follows:

Whenever any ((fireman)) firefighter becomes disabled or sick in consequence or as the result of the performance of his or her duties by reason of which he or she is confined to any hospital an amount not exceeding the daily ward rate of the hospital shall be allowed and paid from said fund toward such hospital expenses: PROVIDED, That this allowance shall not be in lieu of but in addition to any other allowance in this chapter provided: PROVIDED FURTHER, That costs of surgery, medicine, laboratory fees, x-ray, special therapies, and similar additional costs shall be paid in addition thereto: PROVIDED FURTHER, That when extended treatment, not available in the injured ((fireman's)) firefighter's home area, is required, such ((fireman)) firefighter may be reimbursed for actual mileage to and from the place of extended treatment pursuant to RCW 43.03.060 as now existing or hereafter amended.

Sec. 20. Section 23, chapter 261, Laws 1945 as last amended by section 3, chapter 163, Laws of 1986 and RCW 41.24.230 are each amended to read as follows:

Upon the death of any ((fireman)) firefighter resulting from injuries or sickness in consequence or as the result of the performance of his or her duties, the board of trustees shall authorize the issuance of a voucher for the sum of two thousand dollars, and upon the death of any ((fireman)) firefighter who is receiving any disability pension provided for in this chapter, the board of trustees shall authorize the issuance of a voucher for the sum of five hundred dollars, to help defray the funeral expenses and burial of such ((fireman)) firefighter, which voucher shall be paid in the manner provided for payment of other charges against the fund.

Sec. 21. Section 24, chapter 261, Laws of 1945 as last amended by section 3, chapter 205, Laws of 1979 ex. sess. and RCW 41.24.240 are each amended to read as follows:

The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law: PROVIDED, That benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Nothing in this chapter shall be construed to deprive any ((fireman)) firefighter, eligible to receive a pension hereunder, from receiving a pension under any other act to which ((he)) that firefighter may become eligible by reason of services other than or in addition to his or her services as a ((fireman)) firefighter under this chapter.

Sec. 22. Section 2, chapter 263, Laws of 1955 as amended by section 11, chapter 30, Laws of 1982 1st ex. sess. and RCW 41.24.250 are each amended to read as follows:

There is established a state board for volunteer ((firemen)) firefighters to consist of three members of a fire department covered by this chapter, no two of whom shall be from the same congressional district, to be appointed by the governor to serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for four years, and one for two years. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an

oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to this chapter, which oath shall be filed with the secretary of state.

The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

Sec. 23. Section 6, chapter 263, Laws of 1955 and RCW 41.24.290 are each amended to read as follows:

The state board shall:

- (1) Generally supervise and control the administration of this chapter;
- (2) Promulgate, amend, or repeal rules and regulations not inconsistent with this chapter for the purpose of effecting a uniform and efficient manner of carrying out the provisions of this chapter and the purposes to be accomplished thereby, and for the government of boards of trustees of the municipalities of this state in the discharge of their functions under this chapter;
- (3) Review any action, and hear and determine any appeal which may be taken from the decision of the board of trustees of any municipality made pursuant to this chapter;
- (4) Take such action as may be necessary to secure compliance of the municipalities governed by this chapter and to provide for the collection of all fees and penalties which are, or may be, due and delinquent from any such municipality;
- (5) Review the action of the board of trustees of any municipality authorizing any pension as provided by this chapter; and authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of such municipality;
- (6) Require periodic reports from the recipient of any benefits under this chapter for the purpose of determining their continued eligibility therefor;
- (7) Maintain such records as may be necessary and proper for the proper maintenance and operation of the volunteer (~~firemen's~~) firefighters' relief and pension fund, including records of the names and addresses of every person enrolled under this chapter, and provide all necessary forms to enable local boards of trustees to effectively carry out their duties as provided by this chapter;
- (8) Compel the taking of testimony from witnesses under oath before the state board, or any member or the secretary thereof, or before the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time, in connection with any claim or pension pending or authorized for payment. For such purpose the state board shall have the same power of subpoena as prescribed in RCW 51.52.100. Failure of any claimant to appear and give any testimony as herein provided shall suspend

any rights or eligibility to receive payments for the period of such failure to appear and testify;

(9) Appoint a secretary to hold office at the pleasure of the state board, fix ~~((his))~~ the secretary's compensation at such sum as it shall deem appropriate, and prescribe ~~((his))~~ the secretary's duties not otherwise provided by this chapter.

Sec. 24. Section 8, chapter 263, Laws of 1955 as last amended by section 88, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 41.24.310 are each amended to read as follows:

The secretary shall maintain an office at Olympia at a place to be provided, wherein ~~((he))~~ the secretary shall

(1) keep a record of all proceedings of the state board, which shall be public,

(2) maintain a record of all members of the pension fund, including such pertinent information relative thereto as may be required by law or regulation of the state board,

(3) receive and promptly remit to the state treasurer all moneys received for the volunteer ~~((firemen's))~~ firefighters' relief and pension fund,

(4) transmit periodically to the proper state agency for payment all claims payable from the volunteer ~~((firemen's))~~ firefighters' relief and pension fund, stating the amount and purpose of such payment,

(5) certify monthly for payment a list of all persons approved for pensions and the amount to which each is entitled,

(6) perform such other and further duties as shall be prescribed by the state board.

The secretary shall receive such compensation as shall be fixed by the state board, together with travel expenses in carrying out his or her duties authorized by the state board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

NEW SECTION. Sec. 25. A new section is added to chapter 41.24 RCW to read as follows:

The state actuary shall provide actuarial services for the board.

NEW SECTION. Sec. 26. Section 4, chapter 86, Laws of 1965, section 20, chapter 6, Laws of 1970 ex. sess. and RCW 41.24.031 are each repealed.

NEW SECTION. Sec. 27. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the Senate March 10, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 92

[Senate Bill No. 5636]

UNEMPLOYMENT COMPENSATION—ELIGIBILITY, OVERPAYMENTS, AND
CONFIDENTIALITY

AN ACT Relating to unemployment compensation benefits, claims, recovery, appeals, and confidentiality; amending RCW 50.20.098 and 50.20.190; and adding a new section to chapter 50.13 RCW.

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

Sec. 1. Section 10, chapter 292, Laws of 1977 ex. sess. and RCW 50.20.098 are each amended to read as follows:

(1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of 8 U.S.C. Sec. 1153(a)(7) or 8 U.S.C. Sec. 1182(d)(5): PROVIDED, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

Sec. 2. Section 87, chapter 35, Laws of 1945 as last amended by section 6, chapter 35, Laws of 1981 and RCW 50.20.190 are each amended to read as follows:

An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of the individual's benefit

year in which the purported overpayment was made unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

The commissioner may waive an overpayment if ~~((he))~~ the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only~~((;))~~ shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within ~~((ten))~~ thirty days of the delivery of the notice of determination of liability, or within ~~((ten))~~ thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the

warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law (~~((by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim taken in this state as an agent for such agency))~~), the commissioner may collect the amount of such benefits from ~~((such))~~ the claimant to be refunded to ~~((such))~~ the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

NEW SECTION. Sec. 3. A new section is added to chapter 50.13 RCW to read as follows:

(1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.17 RCW to the contrary.

Passed the Senate March 9, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 93

[Substitute Senate Bill No. 5933]

STATE EMPLOYEES—ANNUAL LEAVE SHARING

AN ACT Relating to an annual leave sharing program for state employees; adding new sections to chapter 41.04 RCW; adding a new section to chapter 28A.58 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.04 RCW to read as follows:

The legislature finds that: (1) State employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family; and (2) these circumstances may be exacerbated because the affected employees use all their accrued sick leave and annual leave and are forced to take leave without pay or terminate their employment. Therefore, the legislature intends to provide for the establishment of a leave sharing program.

NEW SECTION. Sec. 2. A new section is added to chapter 41.04 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 1 through 7 of this act.

(1) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(2) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(3) "Program" means the leave sharing program established in section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 41.04 RCW to read as follows:

The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

NEW SECTION. Sec. 4. A new section is added to chapter 41.04 RCW to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature and which has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(b) The employee's absence and the use of shared leave are justified;

(c) The employee has depleted or will shortly deplete his or her annual leave and sick leave reserves;

(d) The employee has abided by agency rules regarding sick leave use; and

(e) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days.

(4) Transfers of leave made by an agency head under subsection (3) of this section shall not exceed the requested amount.

(5) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(6) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the annual leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(7) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(8) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

NEW SECTION. Sec. 5. A new section is added to chapter 41.04 RCW to read as follows:

The state personnel board, the higher education personnel board, and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of sections 1 through 4 of this act; (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with section 4(5) of this act; (3) establishing procedures to ensure that the program does not significantly increase the cost of providing annual leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.58 RCW to read as follows:

Every school district board of directors and educational service district superintendent may, in accordance with sections 1 through 4 of this act, establish and administer an annual leave sharing program for their certificated and noncertificated employees. For employees of school districts and educational service districts, the superintendent of public instruction shall adopt standards: (1) Establishing appropriate parameters for the program

which are consistent with the provisions of sections 1 through 4 of this act; and (2) establishing procedures to ensure that the program does not significantly increase the cost of providing annual leave.

NEW SECTION. Sec. 7. School districts, the department of personnel, the higher education personnel board, and other personnel authorities may adopt temporary emergency policies and procedures to implement the program on the effective date of this act so that donated leave may be used in lieu of leave without pay taken after the effective date of this act.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 7, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 94

[Substitute Senate Bill No. 5066]

SELF DEFENSE—SPECIAL VERDICT AND INDEMNIFICATION

AN ACT Relating to defense of person or property; amending RCW 9.01.200; and recodifying RCW 9.01.200.

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

Sec. 1. Section 8, chapter 206, Laws of 1977 ex. sess. and RCW 9.01-.200 are each amended to read as follows:

(1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of ((aggravated)) assault, ((armed)) robbery, ((holdup)) kidnapping, arson, burglary, rape, murder, or any other heinous crime.

(2) When a substantial question of self defense in such a case shall exist which needs legal investigation or court action for the full determination of the facts, and the defendant's actions are subsequently found justified under the intent of this section, the state of Washington shall indemnify or reimburse such defendant for all loss of time, legal fees, or other expenses involved in his or her defense. This indemnification or reimbursement is an award of reasonable costs which include loss of time, legal fees, or other

expenses and is not an independent cause of action. The determination of an award shall be by the judge or jury at the discretion of the judge in the criminal proceeding. To award these reasonable costs the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence: PROVIDED, HOWEVER, That nothing shall preclude the legislature from granting a higher award through the sundry claims process.

(3) Whenever the issue of self defense under this section is decided by a judge or whenever a judge exercises the discretion authorized under subsection (2) of this section in determining an award, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) of this section.

(4) Whenever the issue of self defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, and the judge has submitted an award determination to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | <u>answer</u> |
|---|------------------|
| | <u>yes or no</u> |
| <u>1. Was the finding of not guilty based upon self defense?</u> | |
| <u>2. If your answer to question 1 is no, do not answer the remaining question.</u> | |
| <u>3. If your answer to question 1 is yes,</u>
<u>was the defendant:</u> | |
| <u>a. Protecting himself or herself?</u> | |
| <u>b. Protecting his or her family?</u> | |
| <u>c. Protecting his or her property?</u> | |
| <u>d. Coming to the aid of another who</u>
<u>was in imminent danger of a heinous crime?</u> | |
| <u>e. Coming to the aid of another who</u>
<u>was the victim of a heinous crime?</u> | |

NEW SECTION. Sec. 2. RCW 9.01.200 is hereby decodified and re-codified as a new section in chapter 9A.16 RCW.

Passed the Senate April 11, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 95

[Senate Bill No. 5480]

MALICIOUS HARASSMENT

AN ACT Relating to malicious harassment; amending RCW 9A.36.080; reenacting and amending RCW 2.56.030; and creating a new section.

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

Sec. 1. Section 1, chapter 267, Laws of 1981 as amended by section 1, chapter 268, Laws of 1984 and RCW 9A.36.080 are each amended to read as follows:

(1) A person is guilty of malicious harassment if he maliciously and with the intent to intimidate or harass another person because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

(a) Causes physical injury to another person; or

(b) By words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person ~~((: PROVIDED, HOWEVER, That it shall))~~. Such words or conduct include, but are not limited to, (i) cross burning, (ii) painting, drawing, or depicting symbols or words on the property of the victim when the symbols or words historically or traditionally connote hatred or threats toward the victim, or (iii) written or oral communication designed to intimidate or harass because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap. However, it does not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way ((so long as his or her words or actions do not constitute a threat of harm to the body)) unless the context or circumstances surrounding the words or conduct places another person in reasonable fear of harm to his or her person or property or harm to the person or property of ((another)) a third person; or

(c) Causes physical damage to or destruction of the property of another person.

(2) The following constitute per se violations of this section:

(a) Cross burning; or

(b) Defacement of the property of the victim or a third person with symbols or words when the symbols or words historically or traditionally connote hatred or threats toward the victim.

(3) Malicious harassment is a class C felony.

~~((3))~~ (4) In addition to the criminal penalty provided in subsection ((2)) (3) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious

harassment for actual damages and punitive damages of up to ten thousand dollars.

~~((4))~~ (5) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

Sec. 2. Section 3, chapter 259, Laws of 1957 as last amended by section 23, chapter 109, Laws of 1988 and by section 2, chapter 234, Laws of 1988 and RCW 2.56.030 are each reenacted and amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Formulate and submit to the judicial council of this state recommendations of policies for the improvement of the judicial system;

(10) Submit annually, as of February 1st, to the chief justice and the judicial council, a report of the activities of the administrator's office for the preceding calendar year;

(11) Administer programs and standards for the training and education of judicial personnel;

(12) Examine the need for new superior court and district judge positions under a weighted caseload analysis that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court. The results of the weighted caseload analysis shall be reviewed by the board for judicial administration and the judicial council, both of which shall make recommendations to the legislature by January 1, 1989. It is the intent of the legislature that weighted caseload analysis become the basis for creating additional district court positions, and recommendations should address that objective;

(13) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(14) Attend to such other matters as may be assigned by the supreme court of this state; ((and))

(15) Develop a curriculum for a general understanding of child development and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A and 13.34 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers by July 1, 1988;

(16) Develop a curriculum for a general understanding of hate or bias crimes, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be completed and made available to all superior court and court of appeals judges and to all justices of the supreme court by July 1, 1989.

NEW SECTION. Sec. 3. The provisions of this act shall be liberally construed in order to effectuate its purpose.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 7, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 96

[Substitute Senate Bill No. 5168]

WESTERN LIBRARY NETWORK—PRIVATE, NONPROFIT CORPORATION STATUS

AN ACT Relating to the operation of an automated bibliographic service by the state library commission; amending RCW 27.26.010, 42.18.221, 27.04.045, and 41.06.070; adding

new sections to chapter 27.26 RCW; creating new sections; decodifying section 5, chapter ..., Laws of 1989; repealing RCW 27.26.010, 27.26.020, 27.26.030, 27.26.040, 27.26.050, 27.26.060, 27.26.—, 27.26.—, 27.26.—, 27.26.—, 27.26.—, and 27.26.—; providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that automated bibliographic, computer-based telecommunications, interlibrary, reference, and referral systems and related library services have proven to be a benefit to the citizens of the state of Washington; that these services have been provided through a network of public and private information providers both inside and outside the state; that the current governance structure of the network restricts the ability of the network to meet the needs of the library community and the citizens of Washington; that changes in the governance structure will result in increased efficiency, economy, and effectiveness of the network, in preserving the technology developed by the network, and in serving the library community and the citizens of Washington better; that the network now requires a new governance structure that allows the necessary operational flexibility in order to foster the continued availability of the benefits of the network to the citizens of Washington; and that the operation of the network as a private, nonprofit corporation is the best method to achieve these goals.

Sec. 2. Section 2, chapter 31, Laws of 1975-'76 2nd ex. sess. as amended by section 1, chapter 21, Laws of 1985 and RCW 27.26.010 are each amended to read as follows:

As used in this chapter, unless otherwise required by the context, the following definitions shall apply:

(1) "Western library network computer system" means the communication facilities, computers, and peripheral computer devices supporting the automated library system developed by the state of Washington;

(2) "Network" means the western library network which is an organization of autonomous, geographically dispersed participants using the western library network computer system, telecommunications systems, interlibrary systems, and reference and referral systems;

(3) "Resources" are library materials which include but are not limited to print, nonprint (e.g., audiovisual, realia, etc.), and microform formats; network resources such as software, hardware, and equipment; electronic and magnetic records; data bases; communication technology; facilities; and human expertise;

(4) "Telecommunications" includes any point to point transmission, emission, or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, radio, microwave radio, optical, or other electromagnetic system, including any intervening processing and storage serving a point to point system;

(5) "Interlibrary loan system" means the accepted procedures among libraries by which library materials are made available in some format to users of another library;

(6) "Reference and referral system" pertains to procedures among libraries whereby subject or fact-oriented queries may be referred to another institution when the answering resource or subject expertise is unavailable in the institution originally queried;

(7) "Successor organization" means a private, nonprofit corporation created specifically to assume responsibility for providing the services now being provided by the western library network under this chapter. Any such private, nonprofit corporation shall qualify as a tax-exempt, nonprofit corporation under section 501(C) of the federal internal revenue code; shall include on its board of directors a majority of representation by public sector libraries or other public agencies; and shall agree to provide access to a bibliographic database and related service to network users. If no such corporation exists, which is capable, in the commission's opinion, of adequately assuming the networks' operations, then another governmental entity, an organization created under the interlocal cooperation act, chapter 39.34 RCW, or a corporation currently providing automated bibliographic, telecommunications, computer network, or equivalent services to libraries in the state of Washington shall be the successor organization;

(8) "Commission" means the Washington state library commission.

NEW SECTION. Sec. 3. (1) The commission may cooperate with other agencies both inside and outside the state of Washington to establish a private, nonprofit corporation for the purpose of providing automated bibliographic, computer-based telecommunications, interlibrary, reference, and referral systems, computer network services, and related library services that are equivalent to the services provided by the western library network on June 1, 1989. The commission may adopt policies and rules consistent with the purposes and provisions of sections 3 through 5, 9, and 11 of this act and RCW 42.18.221 pursuant to the administrative procedure act.

(2) The commission may terminate the services provided by the western library network before June 30, 1997, if a successor organization agrees to assume full responsibility for providing services that are equivalent to the services provided by the western library network on June 1, 1989, to the state library, other agencies of state and local government, and other users of the western library network. The commission may not terminate western library network services within six months after the effective date of this act. The commission may not enter into a contract with a successor organization for the delivery of network services after five and one-half years from the effective date of this act.

NEW SECTION. Sec. 4. In order to accomplish the establishment of a successor organization, the commission may take all necessary and proper steps, including:

(1) Transfer any equipment, software, database, other assets, or contracts for services to the successor organization under appropriate terms and conditions, including reasonable compensation deemed appropriate by the commission. However, the commission shall retain the right to repossess any such property transferred for a period of up to five years, in the event that the successor organization becomes bankrupt, insolvent, or is otherwise unable to provide network services that are satisfactory to a majority of the network users, or if the successor organization fails to comply with the provisions of any contract with the commission during the five-year period. In the event that the commission exercises its right to repossess under this section, any such property returned to the commission shall become the property of the state of Washington and shall be administered by the commission. If such a repossession occurs, the commission may provide western library network services;

(2) Unless otherwise provided by agreement, assign any membership agreements, software contracts, and other duties and responsibilities to the successor organization that are related to the western library network;

(3) Provide for personnel services by western library network employees, or other necessary support services to the successor organization under contract for up to a two-year period after the effective date of a contract between a successor organization and the commission for delivery of network services. The successor organization shall provide full reimbursement for all costs of services contracted for under this provision;

(4) Pay an annual membership fee to the successor organization not to exceed the value of services received; and

(5) Designate one or more persons to serve in the capacity of a member of the board of directors of a successor organization. The state shall not be liable for either the actions of the director in that capacity, nor for the actions of the successor organization.

NEW SECTION. Sec. 5. At the time western library network services are terminated by the commission pursuant to section 3(2) of this act:

(1) Any supplies, equipment, or other property, whether tangible or intangible, not transferred to the successor organization shall remain the property of the state of Washington and shall be administered by the commission;

(2) Any funds remaining in the western library network computer system revolving fund shall be used by the commission to meet outstanding obligations of the network not transferred to the successor organization. At such time as all such obligations have been fulfilled, any remaining funds shall be transferred to the general fund;

(3) Any contracts or other obligations of the western library network not transferred to the successor organization shall be the obligation of the Washington state library.

Sec. 6. Section 4, chapter 426, Laws of 1987 and RCW 42.18.221 are each amended to read as follows:

(1) No former state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state employees in the course of employee organization business.

(2) No former state employee may share in any compensation received by another person for assistance that the former state employee is prohibited from rendering under subsection (1) of this section. This subsection shall not apply to former state employees who were required by statute to have been active members of the state bar association and subject to the code of professional responsibility.

(3) No former state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from any private business if (a) the state employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that private business and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration, (b) such a contract or contracts have a total value of more than ten thousand dollars, and (c) the duties of the employment by the private business or the activities for which the compensation would be received from the private business include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prevent a state employee from accepting employment with a state employee organization.

(4) No former state employee may accept an offer of employment or receive compensation from any private business if the state employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, as compensation or reward for the performance or nonperformance of a duty by the state employee during the course of state employment.

(5) For the purposes of this section, the term "private business" includes any natural person, partnership, association, or corporation of any kind or description that is engaged in business activity in this state or elsewhere. If any natural person, closely associated or related group of natural persons, partnership, or corporation owns or controls two or more businesses, all of the businesses owned or controlled shall be defined as a single private business for the purposes of this section. The term "private business,"

for purposes of this section, does not include a "successor organization" as defined under RCW 27.26.010.

(6) This section shall not be construed to prevent a former state employee from rendering assistance to others if the assistance is provided without compensation in any form and is limited to one or more of the following:

(a) Providing the names, addresses, and telephone numbers of state agencies or state employees;

(b) Providing free transportation to another for the purpose of conducting business with a state agency;

(c) Assisting a natural person or nonprofit corporation in obtaining or completing application forms or other forms required by a state agency for the conduct of a state business; or

(d) Providing assistance to the poor and infirm.

(7) The permitted exceptions applicable to state employees under RCW 42.18.180 shall also be applicable to former state employees under this section, subject to conditions or limitations set forth in regulations issued pursuant to RCW 42.18.240.

Sec. 7. Section 2, chapter 152, Laws of 1984 and RCW 27.04.045 are each amended to read as follows:

The state library commission shall be responsible for the following functions:

(1) Maintaining a library at the state capitol grounds to effectively provide library and information services to members of the legislature, state officials, and state employees in connection with their official duties;

(2) Acquiring and making available information, publications, and source materials that pertain to the history of the state;

(3) Serving as the depository for newspapers published in the state of Washington thus providing a central location for a valuable historical record for scholarly, personal, and commercial reference and circulation;

(4) Collecting and distributing copies of state publications by ensuring that:

(a) The state library collects and makes available as part of its collection copies of any state publication, as defined in RCW 40.06.010, prepared by any state agency whenever fifteen or more copies are prepared for distribution. The state library commission, on recommendation of the state librarian, may provide by rule for deposit with the state library of up to three copies of such publication; and

(b) The state library maintains a division to serve as state publications distribution center, as provided in chapter 40.06 RCW;

(5) Providing advisory services to state agencies regarding their information needs;

(6) Providing for library and information service to residents and staff of state-supported residential institutions;

(7) Providing for library and information services to persons throughout the state who are blind and/or physically handicapped;

(8) Assisting individuals and groups such as libraries, library boards, governing bodies, and citizens throughout the state toward the establishment and development of library services;

(9) Making studies and surveys of library needs in order to provide, expand, enlarge, and otherwise improve access to library facilities and services throughout the state;

(10) Serving as a primary interlibrary loan, information, reference, and referral center for all libraries in the state;

(11) Assisting in the provision of direct library and information services to individuals;

(12) Overseeing of the Washington library network in accordance with chapters 27.26 and 43.105 RCW. This subsection shall expire on June 30, 1997.

Sec. 8. Section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 2, chapter 389, Laws of 1987 and RCW 41.06.070 are each amended to read as follows:

The provisions of this chapter do not apply to:

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

(2) 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;

(3) Officers, academic personnel, and employees of state institutions of higher education, the state board for community college education, and the higher education personnel board;

(4) The officers of the Washington state patrol;

(5) Elective officers of the state;

(6) The chief executive officer of each agency;

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

(8) 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:

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

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

the board, commission, or committee; and (iii) the confidential secretary of the chief executive officer of the board, commission, or committee;

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

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

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

(10) Assistant attorneys general;

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

(12) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the state personnel board or the board having jurisdiction;

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

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

(15) Officers and employees of the Washington state apple advertising commission;

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

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

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

(19) Officers and employees of any commission formed under the provisions of chapter 191, Laws of 1955, and chapter 15.66 RCW;

(20) Officers and employees of the state wheat commission formed under the provisions of chapter 87, Laws of 1961 (chapter 15.63 RCW);

(21) Officers and employees of agricultural commissions formed under the provisions of chapter 256, Laws of 1961 (chapter 15.65 RCW);

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

(23) Liquor vendors appointed by the Washington state liquor control board pursuant to RCW 66.08.050: PROVIDED, HOWEVER, That rules and regulations adopted by the state personnel board pursuant to RCW 41.06.150 regarding the basis for, and procedures to be followed for, the dismissal, suspension, or demotion of an employee, and appeals therefrom shall be fully applicable to liquor vendors except those part time agency vendors employed by the liquor control board when, in addition to the sale of liquor for the state, they sell goods, wares, merchandise, or services as a self-sustaining private retail business;

(24) 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;

(25) All employees of the marine employees' commission;

(26) Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection shall expire on June 30, 1997;

(27) In addition to the exemptions specifically provided by this chapter, the state personnel board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the personnel board stating the reasons for requesting such exemptions. The personnel board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the personnel board shall grant the request and such determination shall be final. The total number of additional exemptions permitted under this subsection shall not exceed one hundred eighty-seven 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 state personnel board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted pursuant to the provisions of this subsection, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (10) through (22) of this section, shall be determined by the state personnel board.

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

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right

of reversion to the highest class of position previously held, or to a position of similar nature and salary, within four years from the date of appointment to the exempt position. However, (a) upon the prior request of the appointing authority of the exempt position, the personnel board may approve one extension of no more than four years; and (b) if an appointment was accepted prior to July 10, 1982, then the four-year period shall begin on July 10, 1982.

NEW SECTION. Sec. 9. The western library network and its powers and duties shall be terminated on June 30, 1997.

NEW SECTION. Sec. 10. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1997:

(1) Section 2, chapter 31, Laws of 1975-'76 2nd ex. sess., section 1, chapter 21, Laws of 1985, section 2, chapter —, Laws of 1989 (section 2 of this act) and RCW 27.26.010;

(2) Section 1, chapter 31, Laws of 1975-'76 2nd ex. sess., section 2, chapter 21, Laws of 1985, section 13, chapter 504, Laws of 1987 and RCW 27.26.020;

(3) Section 2, chapter 110, Laws of 1975-'76 2nd ex. sess., section 4, chapter 21, Laws of 1985, section 4, chapter 389, Laws of 1987 and RCW 27.26.030;

(4) Section 4, chapter 110, Laws of 1975-'76 2nd ex. sess., section 6, chapter 21, Laws of 1985, section 12, chapter 504, Laws of 1987 and RCW 27.26.040;

(5) Section 7, chapter 21, Laws of 1985 and RCW 27.26.050;

(6) Section 8, chapter 21, Laws of 1985 and RCW 27.26.060;

(7) Section 1, chapter —, Laws of 1989 (section 1 of this act) (uncodified);

(8) Section 3, chapter —, Laws of 1989 (section 3 of this act) and RCW 27.26.—;

(9) Section 4, chapter —, Laws of 1989 (section 4 of this act) and RCW 27.26.—;

(10) Section 6, chapter —, Laws of 1989 (section 6 of this act) and RCW 27.26.—;

(11) Section 9, chapter —, Laws of 1989 (section 9 of this act) and RCW 27.26.—; and

(12) Section 11, chapter —, Laws of 1989 (section 11 of this act) and RCW 27.26.—.

NEW SECTION. Sec. 11. Section 5 of this act shall be decodified effective June 30, 1997.

NEW SECTION. Sec. 12. The commission shall submit an annual report on the status of the establishment of a successor organization to the appropriate committees of the senate and house of representatives, no later

than January 1 of each year, with a final report to be submitted no later than January 1, 1998.

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

NEW SECTION. Sec. 14. Sections 3 through 5, 9, and 11 of this act are each added to chapter 27.26 RCW.

NEW SECTION. Sec. 15. Sections 1 through 6 and 9 through 14 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on June 1, 1989.

Passed the Senate February 20, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 97

[Senate Bill No. 5731]

UNITED STATES GOVERNMENT OBLIGATIONS—AUTHORIZATION TO INVEST IN

AN ACT Relating to forms of investments in obligations of the United States government; amending RCW 11.100.035 and 39.58.050; adding a new section to chapter 32.20 RCW; and adding a new section to chapter 33.24 RCW.

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

Sec. 1. Section 69, chapter 30, Laws of 1985 and RCW 11.100.035 are each amended to read as follows:

(1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

NEW SECTION. Sec. 2. A new section is added to chapter 32.20 RCW to read as follows:

Except as may be limited by the supervisor by rule, a mutual savings bank may invest its funds in obligations of the United States, as authorized by RCW 32.20.030, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

NEW SECTION. Sec. 3. A new section is added to chapter 33.24 RCW to read as follows:

Except as may be limited by the supervisor by rule, an association may invest its funds in obligations of the United States, as authorized by RCW 33.24.020, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

Sec. 4. Section 5, chapter 193, Laws of 1969 ex. sess. as last amended by section 13, chapter 177, Laws of 1984 and RCW 39.58.050 are each amended to read as follows:

(1) Every qualified public depository 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 may be segregated by deposit in the trust department of the depository or in such

other manner as the commission approves 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.

(3) The depository shall have the right to make substitutions of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the depository 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) (i) Bonds, notes, or other securities constituting direct and general obligations of the United States or the bonds, notes, or other securities constituting the direct and general obligation of any instrumentality of the United States, the interest and principal of which is unconditionally guaranteed by the United States((-));

(ii) Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(A) The portfolio of the investment company or investment trust is limited to the obligations of the United States as described in (a) of this subsection and to repurchase agreements fully collateralized by such obligations; and

(B) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian; and

(iii) 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;

(b) (i) Direct and general obligation bonds and warrants of the state of Washington or of any other state of the United States;

(ii) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof;

(c) 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;

(d) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(e) 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 subsections (5)(a) through (e) of this section, every public depository may also segregate such bonds, securities, and other obligations as are designated to be authorized security for all public deposits pursuant to RCW 35.58.510, 35.81.110, 35.82.220, 39.60.030, 39.60.040 and 54.24.120, as now or hereafter amended.

(7) The commission may at any time or times declare any particular security as ineligible to qualify as collateral when in the commission's judgment it is deemed desirable to do so.

Passed the Senate March 2, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 98

[Substitute Senate Bill No. 5790]

MORTGAGE LOAN SERVICING—SALE, TRANSFER, OR ASSIGNMENT— DISCLOSURES AND DUTIES

AN ACT Relating to residential mortgage loans; adding a new chapter to Title 19 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. The ability of individuals to obtain information relating to their residential mortgage loans is vital to the financial needs of mortgagors in Washington. The public interest is adversely affected when a residential mortgage loan's servicing is sold or transferred with insufficient notification given to the mortgagor. In addition, mortgagors may experience difficulty in obtaining various mortgage loan information including information concerning mortgage loan prepayments, reserve accounts, and adjustments to monthly payments. The legislature finds that the legitimate interests of mortgagors and mortgage loan servicers are served if the disclosure of the potential sale of loan servicing is made to the mortgagor, reasonable notification of a residential mortgage loan servicing's sale is made, and continued mortgagor access to information regarding the mortgage loan is promoted.

NEW SECTION. Sec. 2. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Lender" shall mean any person in the business of making a loan.

(2) "Loan" shall mean any loan used to finance the acquisition of a one-to-four family owner occupied residence located in this state.

(3) "Purchasing servicing agent" is any person who purchases, receives through transfer or assignment, or otherwise acquires the responsibility of the servicing for a loan.

(4) "Person" shall include an individual, firm, association, partnership, business, trust, corporation, or any other legal entity whether resident or nonresident.

NEW SECTION. Sec. 3. (1) If the servicing for the loan is subject to sale, transfer, or assignment, a lender shall so disclose in writing at the time of or prior to loan closing and shall also disclose in the same writing that when such servicing is sold, transferred, or assigned, the purchasing servicing agent is required to provide notification to the mortgagor. If a lender, which has not provided the notice required by this subsection, consolidates with, merges with or is acquired by another institution, and thereafter loan servicing becomes subject to sale, transfer, or assignment, that institution shall within thirty days of such transaction make the disclosure in writing to the obligor primarily responsible for repaying each loan according to the records of the lender.

(2) If the servicing of a loan is sold, assigned, transferred, or otherwise acquired by another person, the purchasing servicing agent shall:

- (a)(i) Issue corrected coupon or payment books, if used and necessary;
- (ii) Provide notification to the mortgagor at least thirty days prior to the due date of the first payment to the purchasing servicing agent, of the name, address, and telephone number of the division from whom the mortgagor can receive information regarding the servicing of the loan; and
- (iii) Inform the mortgagor of changes made regarding the servicing requirements including, but not limited to, interest rate, monthly payment amount, and escrow balance; and

(b) Respond within fifteen business days upon receipt of a written request for information from a mortgagor. A written response must include the telephone number of the company division who can assist the mortgagor.

(3) Any person injured by a violation of this chapter may bring an action for actual damages and reasonable attorneys' fees and costs incurred in bringing the action.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 5. This act shall take effect on January 1, 1990.

Passed the Senate April 11, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 99

[Senate Bill No. 5090]

UNRANKED FELONIES—SERIOUSNESS LEVELS

AN ACT Relating to seriousness levels for unranked felonies; reenacting and amending RCW 9.94A.320; creating a new section; declaring an emergency; and providing an effective date.

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

Sec. 1. Section 2, chapter 62, Laws of 1988, section 12, chapter 145, Laws of 1988, and section 2, chapter 218, Laws of 1988 and RCW 9.94A-.320 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.011)
X	Kidnapping 1 (RCW 9A.40.020) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (and 3 years junior) (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) <u>Controlled Substance Homicide (RCW 69.50.415)</u> Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a)) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
VIII	Arson 1 (RCW 9A.48.020) Rape 2 (RCW 9A.44.050)

- Rape of a Child 2 (RCW 9A.44.076)
 - Child Molestation 1 (RCW 9A.44.083)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling heroin for profit (RCW 69.50.410)
- VII
- Burglary 1 (RCW 9A.52.020)
 - Vehicular Homicide (RCW 46.61.520)
 - Introducing Contraband 1 (RCW 9A.76.140)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
 - Involving a minor in drug dealing (RCW 69.50.401(f))
- VI
- Bribery (RCW 9A.68.010)
 - Manslaughter 2 (RCW 9A.32.070)
 - Child Molestation 2 (RCW 9A.44.086)
 - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 - Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 - Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 - Incest 1 (RCW 9A.64.020(1))
 - Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
 - Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))
 - Intimidating a Judge (RCW 9A.72.160)
 - Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- V
- Criminal Mistreatment 1 (RCW 9A.42.020)
 - Rape 3 (RCW 9A.44.060)
 - Kidnapping 2 (RCW 9A.40.030)
 - Extortion 1 (RCW 9A.56.120)
 - Incest 2 (RCW 9A.64.020(2))
 - Perjury 1 (RCW 9A.72.020)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)

- Rendering Criminal Assistance 1 (RCW 9A.76.070)
Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- IV Theft of Livestock 1 (RCW 9A.56.080)
 Robbery 2 (RCW 9A.56.210)
 Assault 2 (RCW 9A.36.021)
 Escape 1 (RCW 9A.76.110)
 Arson 2 (RCW 9A.48.030)
 Rape of a Child 3 (RCW 9A.44.079)
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
 Malicious Harassment (RCW 9A.36.080)
Threats to Bomb (RCW 9.61.160)
 Wilful Failure to Return from Furlough (RCW 72.66.060)
 Hit and Run — Injury Accident (RCW 46.52.020(4))
 Vehicular Assault (RCW 46.61.522)
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I–V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
 Influencing Outcome of Sporting Event (RCW 9A.82.070)
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 Child Molestation 3 (RCW 9A.44.089)
 Extortion 2 (RCW 9A.56.130)
 Unlawful Imprisonment (RCW 9A.40.040)
 Assault 3 (RCW 9A.36.031)
Custodial Assault (RCW 9A.36.100)
 Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 Harassment (RCW 9A.46.020)
 Promoting Prostitution 2 (RCW 9A.88.080)
 Wilful Failure to Return from Work Release (RCW 72.65.070)
 Introducing Contraband 2 (RCW 9A.76.150)
 Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 Patronizing a Juvenile Prostitute (RCW 9.68A.100)
 Escape 2 (RCW 9A.76.120)
 Perjury 2 (RCW 9A.72.030)

Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))

Intimidating a Public Servant (RCW 9A.76.180)

Tampering with a Witness (RCW 9A.72.120)

Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))

Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))

Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))

Theft of livestock 1 (RCW 9A.56.080)

Securities Act violation (RCW 21.20.400)

II Malicious Mischief 1 (RCW 9A.48.070)

Possession of Stolen Property 1 (RCW 9A.56.150)

Theft 1 (RCW 9A.56.030)

Burglary 2 (RCW 9A.52.030)

Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))

Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))

Computer Trespass 1 (RCW 9A.52.110)

I Theft 2 (RCW 9A.56.040)

Possession of Stolen Property 2 (RCW 9A.56.160)

Forgery (RCW 9A.60.020)

Taking Motor Vehicle Without Permission (RCW 9A.56.070)

Vehicle Prowl 1 (RCW 9A.52.095)

Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)

Malicious Mischief 2 (RCW 9A.48.080)

Reckless Burning 1 (RCW 9A.48.040)

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))

False Verification for Welfare (RCW 74.08.055)

Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance (RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (RCW 69.50.401(d))

NEW SECTION. Sec. 2. This act applies to crimes committed after July 1, 1989.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the Senate April 10, 1989.

Passed the House March 29, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 100

[Senate Bill No. 5579]

STATE AGENCIES—PAST DUE ACCOUNTS—REPORTING TO CREDIT
REPORTING AGENCIES

AN ACT Relating to reporting past due accounts to credit reporting agencies; adding a new section to chapter 43.88 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.88 RCW to read as follows:

State agencies may report past due accounts receivable to credit reporting agencies whenever the agency determines that such reporting would be cost-effective and does not violate confidentiality or other legal requirements. Within thirty-five days after satisfaction of a debt reported to a credit reporting agency, the state agency reporting the debt shall notify the credit reporting agency that the debt has been satisfied.

NEW SECTION. Sec. 2. The office of financial management shall examine the potential of devising a central debtor identification system containing the names of persons owing substantial amounts to the state, together with the amounts owed, and providing for the automatic identification of such persons prior to the making of any state payment to them. The examination shall include the estimated costs and benefits of such a system.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 101

[Substitute Senate Bill No. 5098]

TELECOMMUNICATIONS COMPANIES—RATE SETTING PROCEDURES

AN ACT Relating to the regulation of telecommunications companies; amending RCW 80.04.010, 80.36.170, 80.36.180, 80.36.150, 80.36.100, 80.36.110, 80.36.130, 80.36.270, 80.36.310, 80.36.320, 80.36.330, 80.04.110, and 80.36.901; reenacting and amending RCW 80.04.130; and adding new sections to chapter 80.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 80.36 RCW to read as follows:

(1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and section 3 of this act. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject before the effective date of this act to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Reduce regulatory delay and costs;

(b) Encourage innovation in services;

(c) Promote efficiency;

(d) Facilitate the broad dissemination of technological improvements to all classes of ratepayers;

(e) Enhance the ability of telecommunications companies to respond to competition;

(f) Ensure that telecommunications companies do not have the opportunity to exercise substantial market power absent effective competition or effective regulatory constraints; and

(g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company subject to traditional rate of return, rate base regulation may petition the commission to regulate the company under an alternative form of regulation. The company shall submit with its petition its plan for an alternative form of regulation. The plan shall contain the company's proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the company's proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or modified plan and authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

(a) Is in the public interest;

(b) Is necessary to respond to such changes in technology and the structure of the intrastate telecommunications industry as are in fact occurring;

(c) Is better suited to achieving the policy goals set forth in RCW 80-.36.300 and this section than the traditional rate of return, rate base regulation;

(d) Ensures that ratepayers will benefit from any efficiency gains and cost savings arising out of the regulatory change and will afford ratepayers the opportunity to benefit from improvements in productivity due to technological change;

(e) Will not result in a degradation of the quality or availability of efficient telecommunications services;

(f) Will produce fair, just, and reasonable rates for telecommunications services; and

(g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If the company elects to appeal to the courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by the company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: **PROVIDED**, That the commission may not grant the authority

to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Sec. 2. Section 1, chapter 229, Laws of 1987 and RCW 80.04.010 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and

routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter ~~((34.04))~~ 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership, regardless of location or corporate designation. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of social and health services.

The term "service" is used in this title in its broadest and most inclusive sense.

NEW SECTION. Sec. 3. A new section is added to chapter 80.36 RCW to read as follows:

(1) The legislature declares that the availability of an alternative abbreviated formal procedure for use by the commission instead of a full adjudicative proceeding may in appropriate circumstances advance the public interest by reducing the time required by the commission for decision and the costs incurred by interested parties and ratepayers. Therefore, the commission is authorized to use formal investigation and fact-finding instead of an adjudicative proceeding under chapter 34.05 RCW when it determines that its use is in the public interest and that a full adjudicative hearing is not necessary to fully develop the facts relevant to the proceeding and the positions of the parties, including intervenors.

(2) The commission may use formal investigation and fact-finding instead of the hearing provided in the following circumstances:

(a) A complaint proceeding under RCW 80.04.110 with concurrence of the respondent when the commission is the complainant or with concurrence of the complainant and respondent when not the commission;

(b) A tariff suspension under RCW 80.04.130; or

(c) A competitive classification proceeding under RCW 80.36.320 and 80.36.330.

(3) In formal investigation and fact-finding the commission may limit the record to written submissions by the parties, including intervenors. The commission shall review the written submissions and, based thereon, shall enter appropriate findings of fact and conclusions of law and its order. When there is a reasonable expression of public interest in the issues under consideration, the commission shall hold at least one public hearing for the receipt of information from members of the public that are not formal intervenors in the proceeding and may elect to convert the proceeding to an adjudicative proceeding at any stage. The assignment of an agency employee or administrative law judge to preside at such public hearing shall not require the entry of an initial order.

(4) The commission shall adopt rules of practice and procedure including rules for discovery of information necessary for the use of formal investigation and fact-finding and for the filing of written submissions. The commission may provide by rule for a number of rounds of written comments: PROVIDED, That the party with the burden of proof shall always have the opportunity to file reply comments.

Sec. 4. Section 80.36.170, chapter 14, Laws of 1961 as amended by section 31, chapter 450, Laws of 1985 and RCW 80.36.170 are each amended to read as follows:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate,

regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330.

Sec. 5. Section 80.36.180, chapter 14, Laws of 1961 as amended by section 32, chapter 450, Laws of 1985 and RCW 80.36.180 are each amended to read as follows:

No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330.

NEW SECTION. Sec. 6. A new section is added to chapter 80.36 RCW to read as follows:

Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require state-wide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction.

NEW SECTION. Sec. 7. A new section is added to chapter 80.36 RCW to read as follows:

Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

Sec. 8. Section 80.36.150, chapter 14, Laws of 1961 as amended by section 29, chapter 450, Laws of 1985 and RCW 80.36.150 are each amended to read as follows:

(1) Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line. The commission shall adopt rules that provide for the filing by telecommunications companies on the public record of the essential terms and conditions of every contract for service. The commission shall not require that customer proprietary information contained in contracts be disclosed on the public record.

(2) The commission shall not treat contracts as tariffs or price lists. The commission may require noncompetitive service to be tariffed unless the company demonstrates that the use of a contract is in the public interest based upon a customer requirement or a competitive necessity for deviation from tariffed rates, terms and conditions, or that the contract is for a new service with limited demand.

(3) Contracts shall be for a stated time period and shall cover the costs for the service contracted for, as determined by commission rule or order. Contracts shall be enforceable by the contracting parties according to their terms, unless the contract has been rejected by the commission before its stated effective date as improper under the commission's rules and orders, or the requirements of this chapter. If the commission finds a contract to be below cost after it has gone into effect, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(4) Contracts executed and filed prior to the effective date of this act are deemed lawful and enforceable by the contracting parties according to the contract terms. If the commission finds that any existing contract provides for rates that are below cost, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(5) If a contract covers competitive and noncompetitive services, the noncompetitive services shall be unbundled and priced separately from all other services and facilities in the contract. Such noncompetitive services shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions.

Sec. 9. Section 80.36.100, chapter 14, Laws of 1961 as amended by section 24, chapter 450, Laws of 1985 and RCW 80.36.100 are each amended to read as follows:

Every telecommunications company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, ~~((contracts))~~ and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points. If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, ~~((contracts))~~ and charges applicable for such through service. The schedules printed as aforesaid shall plainly state the places between which telecommunications service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations ~~((or forms of contract))~~ which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered. A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telecommunications company upon the demand of any person. A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telecommunications company in a conspicuous place in every station or office of such company.

Sec. 10. Section 80.36.110, chapter 14, Laws of 1961 as amended by section 25, chapter 450, Laws of 1985 and RCW 80.36.110 are each amended to read as follows:

Unless the commission otherwise orders, no change shall be made in any rate, toll, rental, ~~((contract))~~ or charge, which shall have been filed and

published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, ~~((contract))~~ or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges, tolls, or rentals ~~((or contracts))~~ without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published. When any change is made in any rate, toll, ~~((contract;))~~ rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commission may designate.

Sec. 11. Section 80.36.130, chapter 14, Laws of 1961 as amended by section 27, chapter 450, Laws of 1985 and RCW 80.36.130 are each amended to read as follows:

Except as provided in RCW 80.36.150, no telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telecommunications companies, railroad companies, and street railroad companies.

Sec. 12. Section 80.36.270, chapter 14, Laws of 1961 as amended by section 39, chapter 450, Laws of 1985 and RCW 80.36.270 are each amended to read as follows:

Nothing in this title shall be construed to prevent any telecommunications company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force on June 7, 1911 or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts(~~(: PROVIDED, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telecommunications company party thereto, and thereupon such contract or contracts shall be terminated by such telecommunications company as and when directed by such order)).~~

Sec. 13. Section 2, chapter 229, Laws of 1987 and section 1, chapter 333, Laws of 1987 and RCW 80.04.130 are each reenacted and amended to read as follows:

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing or approve, prior to June 1, ((+1990)) 1993, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of lifeline service is a major policy change in available telecommunications service. The implementation of lifeline service will aid in achieving the stated goal of universal telephone service.

Sec. 14. Section 3, chapter 450, Laws of 1985 and RCW 80.36.310 are each amended to read as follows:

Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their classification. The commission shall enter its final order with respect to classification within ten months from the date of filing of a company's petition or the commission's motion.

Sec. 15. Section 4, chapter 450, Laws of 1985 and RCW 80.36.320 are each amended to read as follows:

(1) The commission shall classify a telecommunications company providing service in a relevant market as a competitive telecommunications company if it finds, after notice and hearing, that the telecommunications company has demonstrated that the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a

significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists which shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
- (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
- (c) Keep on file at the commission such current price lists and service standards as the commission may require; and
- (d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of *U.S. v. AT&T*, 552 F.Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if such revocation or reclassification would protect the public interest.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest.

Sec. 16. Section 5, chapter 450, Laws of 1985 and RCW 80.36.330 are each amended to read as follows:

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if it finds, after notice and hearing, that the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list effective on ten days notice to the commission and customers. The commission shall prescribe the form of notice. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of

subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.

Sec. 17. Section 80.04.110, chapter 14, Laws of 1961 as amended by section 11, chapter 450, Laws of 1985 and RCW 80.04.110 are each amended to read as follows:

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into

consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

Sec. 18. Section 44, chapter 450, Laws of 1985 and RCW 80.36.901 are each amended to read as follows:

The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the (~~(1989-1991)~~) 1991-1993 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest.

Passed the Senate April 7, 1989.

Passed the House March 27, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 102

[Substitute Senate Bill No. 5009]

VESSEL REGISTRATION—EXEMPTIONS

AN ACT Relating to vessel registration; and amending RCW 88.02.030.

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

Sec. 1. Section 16, chapter 7, Laws of 1983 as last amended by section 1, chapter 452, Laws of 1985 and RCW 88.02.030 are each amended to read as follows:

Vessel registration is required under this chapter except for the following:

(1) Military or public vessels of the United States, except recreational-type public vessels;

(2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;

(3) ~~Vessels (owned by a resident of a country other than the United States if the vessel is not physically located upon the waters of this state for a period of more than sixty days)~~ either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94;

(4) Vessels owned by a resident of another state if the vessel is registered in accordance with the laws of the state in which the owner resides, but only to the extent that a similar exemption or privilege is granted under the laws of that state for vessels registered in this state: PROVIDED, That any vessel which is validly registered in another state and which is physically located in this state for a period of more than sixty days is subject to registration under this chapter;

(5) ~~((Vessels used as a ship's lifeboat))~~ Vessels owned by a resident of another state if the vessel is located upon the waters of this state exclusively for repairs or reconstruction, or any testing related to the repair or reconstruction conducted in this state if an employee of the repair facility is on board the vessel during any testing: PROVIDED, That any vessel owned by a resident of another state is located upon the waters of this state exclusively for repairs, reconstruction or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, reconstruction or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, reconstruction or testing;

(6) Vessels equipped with propulsion machinery of less than ten horse power that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels which are temporarily in this state undergoing repair or alteration;

(10) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States; and

(11) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States.

Passed the Senate April 10, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 103

[Senate Bill No. 5990]

TELEPHONE TAX—RESALE OF NETWORK TELEPHONE SERVICES—
EXEMPTION FROM MUNICIPAL TAX

AN ACT Relating to limiting the authority of cities to impose license fees or taxes on the resale of network telephone services; and amending RCW 35.21.714, 35.21.715, 35A.82.060, and 35A.82.065.

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

Sec. 1. Section 10, chapter 144, Laws of 1981 as last amended by section 1, chapter 70, Laws of 1986 and RCW 35.21.714 are each amended to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale.

Sec. 2. Section 2, chapter 70, Laws of 1986 and RCW 35.21.715 are each amended to read as follows:

Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges

to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065.

Sec. 3. Section 11, chapter 144, Laws of 1981 as last amended by section 4, chapter 70, Laws of 1986 and RCW 35A.82.060 are each amended to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale.

Sec. 4. Section 5, chapter 70, Laws of 1986 and RCW 35A.82.065 are each amended to read as follows:

Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065.

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

Passed the Senate March 13, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 104

[Substitute Senate Bill No. 5746]

INTERSTATE TRUCK DRIVERS—OVERTIME WAGES—EXEMPTION FROM
COVERAGE

AN ACT Relating to overtime for interstate truck drivers; and reenacting and amending RCW 49.46.130.

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

Sec. 1. Section 3, chapter 289, Laws of 1975 1st ex. sess. as amended by section 1, chapter 4, Laws of 1977 ex. sess. and by section 1, chapter 74, Laws of 1977 ex. sess. and RCW 49.46.130 are each reenacted and amended to read as follows:

(1) No employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears

the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed: **PROVIDED**, That this section shall not apply to any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption: **PROVIDED FURTHER**, That in any industry in which federal law provides for an overtime payment based on a work week other than forty hours then provisions of this section shall not apply; however the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state: **PROVIDED FURTHER**, That "industry" as that term is used in this section shall mean a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259).

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 105

[House Bill No. 1220]

WATER AND SEWER DISTRICTS—CONTRACT PROJECTS—BIDS AND USE OF SMALL WORKS ROSTER

AN ACT Relating to contract projects by water and sewer districts; and amending RCW 56.08.070 and 57.08.050.

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

Sec. 1. Section 44, chapter 210, Laws of 1941 as last amended by section 1, chapter 309, Laws of 1987 and RCW 56.08.070 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than (~~((twenty-five))~~) fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of sewer commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The board of sewer commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of (~~((twenty-five))~~) fifty thousand dollars shall be let by competitive bidding. Before awarding any competitive contract the board of sewer commissioners shall cause a notice to be published in a newspaper in general circulation where the district is located at least once, ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein.

(2) Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: **PROVIDED**, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of sewer commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work,

and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the sewer district.

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

Sec. 2. Section 21, chapter 114, Laws of 1929 as last amended by section 2, chapter 309, Laws of 1987 and RCW 57.08.050 are each amended to read as follows:

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

(2) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than ~~((twenty-five))~~ fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of water commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The board of water commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of ~~((twenty-five))~~ fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of water commissioners shall cause a notice to be published in a newspaper in general circulation where

the district is located at least once ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein.

(3) Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless he enters into a contract in accordance with his bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his own plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the water district: PROVIDED, That if the bidder fails to enter into a contract in accordance with his bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then the water district shall be entitled to collect from said bidder any legal expenses, including reasonable attorneys' fees occasioned thereby.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting

the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

Passed the House March 13, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 106

[Substitute Senate Bill No. 5126]

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SURVEILLANCE FEES

AN ACT Relating to a surveillance fee for low-level radioactive waste disposal; and amending RCW 70.98.085.

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

Sec. 1. Section 3, chapter 383, Laws of 1985 as amended by section 2, chapter 2, Laws of 1986 and RCW 70.98.085 are each amended to read as follows:

(1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency (~~which are not otherwise covered by cost recovery programs including, but not limited to, any funds from federal sources. PROVIDED, That~~) directly related to the disposal site, including but not limited to the management, licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed four percent of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds (~~for other state agencies that incur expenses as a result of the control and management of the disposal of low-level radioactive waste in the state of Washington~~) to the

Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for ~~((these purposes to other state agencies))~~ this purpose shall be by authorization of the secretary of the department of social and health services or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section.

Passed the Senate April 7, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 107

[Senate Bill No. 5022]

PUBLIC SERVICE COMPANIES—REPORTS TO UTILITIES AND TRANSPORTATION COMMISSION

AN ACT Relating to utilities and transportation commission reporting requirements; and amending RCW 80.04.080, 81.04.080, and 80.04.320.

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

Sec. 1. Section 80.04.080, chapter 14, Laws of 1961 and RCW 80.04-.080 are each amended to read as follows:

Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate business, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the company each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning charges, or agreements, arrangements or

contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia (~~within three months after the close of the designated year for which such report is made~~) on such date as the commission specifies by rule, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires.

Sec. 2. Section 81.04.080, chapter 14, Laws of 1961 and RCW 81.04-.080 are each amended to read as follows:

Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to passengers, employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate traffic, the nature of the traffic movement showing the percentage of the ton miles each class of commodity bears to the total ton mileage, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and the proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or

regulations concerning fares, charges or freights, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia (~~within three months after the close of the designated year for which such report is made~~) on such date as the commission specifies by rule, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires.

Sec. 3. Section 80.04.320, chapter 14, Laws of 1961 and RCW 80.04-.320 are each amended to read as follows:

The commission may prescribe the necessary rules (~~and regulations~~) to place RCW 80.04.300 through 80.04.330 in operation. It may, by (~~general order~~) rule, establish criteria to exempt companies in whole or in part from the operation thereof (~~companies whose gross operating revenues are less than twenty-five thousand dollars a year~~). The commission may upon request of any company withhold from publication during such time as the commission may deem advisable any portion of any original or supplementary budget relating to proposed capital expenditures.

Passed the Senate February 15, 1989.

Passed the House April 10, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 108

[House Bill No. 1718]

STATE PATROL—DISABILITY RETIREMENT CONTRIBUTIONS

AN ACT Relating to the Washington state patrol; amending RCW 43.43.270; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 4, chapter 180, Laws of 1973 1st ex. sess. as last amended by section 1, chapter 206, Laws of 1984 and RCW 43.43.270 are each amended to read as follows:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service the member's lawful spouse shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty percent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse shall continue as long as the spouse lives: PROVIDED, That if a surviving spouse who is receiving benefits under this subsection marries another member of this retirement system who subsequently predeceases such spouse, the spouse shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse of a retired member shall have been married to the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to the retired member at least two years prior to the member's death.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or the spouse should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or the spouse should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement (~~and if all contributions paid to the retirement fund have been left in the retirement fund. In the event that contributions have been refunded to a member on disability retirement, he may regain eligibility for survivor's benefits by repaying to the retirement fund the total amount refunded to him plus two and one-half percent interest, compounded annually, covering the period during which the refund was held by him~~).

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House March 13, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 109

[Substitute Senate Bill No. 5782]
PUBLIC UTILITY—DEFRAUDING

AN ACT Relating to defrauding a public utility; adding a new chapter to Title 9A RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The definitions set forth in this section apply throughout this chapter.

(1) "Customer" means the person in whose name a utility service is provided.

(2) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(3) "Person" means an individual, partnership, firm, association, or corporation or government agency.

(4) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility.

(5) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function.

(6) "Utility" means an electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes an electrical, gas, or water system operated by a public agency.

(7) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.

NEW SECTION. Sec. 2. "Defrauding a public utility" means to commit, authorize, solicit, aid, abet, or attempt to:

(1) Divert, or cause to be diverted, utility services by any means whatsoever;

(2) Make, or cause to be made, a connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(3) Prevent a utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(4) Tamper with property owned or used by the utility to provide utility services; or

(5) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

NEW SECTION. Sec. 3. (1) A person is guilty of defrauding a public utility in the first degree if:

(a) The utility service diverted or used exceeds one thousand five hundred dollars in value; or

(b) Tampering has occurred in furtherance of other criminal activity.

(2) Defrauding a public utility in the first degree is a class B felony.

NEW SECTION. Sec. 4. (1) A person is guilty of defrauding a public utility in the second degree if the utility service diverted or used exceeds five hundred dollars in value.

(2) Defrauding a public utility in the second degree is a class C felony.

NEW SECTION. Sec. 5. (1) A person is guilty of defrauding a public utility in the third degree if:

(a) The utility service diverted or used is five hundred dollars or less in value; or

(b) A connection or reconnection has occurred without authorization or consent of the utility.

(2) Defrauding a public utility in the third degree is a gross misdemeanor.

NEW SECTION. Sec. 6. In any prosecution under this section, the court may require restitution from the defendant as provided by chapter 9A.20 RCW, plus court costs plus the costs incurred by the utility on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

NEW SECTION. Sec. 7. Restitution ordered or fines imposed under this chapter do not preclude a utility from collecting damages under RCW 80.28.240 to which it may be entitled.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 9A RCW.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 110

[Substitute Senate Bill No. 5138]

MOTOR VEHICLE INSPECTION FEES

AN ACT Relating to vehicle inspection fees when a physical examination is required; and amending RCW 46.12.040.

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

Sec. 1. Section 46.12.040, chapter 12, Laws of 1961 as last amended by section 1, chapter 138, Laws of 1975 1st ex. sess. and RCW 46.12.040 are each amended to read as follows:

The application accompanied by a draft, money order, or certified bank check for one dollar, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

In addition to the application fee and any other fee for the license registration of a vehicle, there shall be collected from the applicant an inspection fee (~~of ten dollars~~) whenever a physical examination of the vehicle is required as a part of the vehicle licensing or titling process.

~~((These fees shall be certified to the state treasurer and deposited to the credit of))~~ For vehicles previously registered in any other state or country, the inspection fee shall be fifteen dollars and shall be deposited in the motor vehicle fund. For all other vehicles requiring a physical examination, the inspection fee shall be twenty dollars and shall be deposited in the motor vehicle fund.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 111

[Senate Bill No. 5440]

TOW TRUCKS—REGISTRATION, PERMITS, AND IMPOUND PROCEDURES

AN ACT Relating to tow trucks; amending RCW 46.55.020, 46.55.030, 46.55.040, 46.55.060, 46.55.080, 46.55.100, 46.55.110, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.180, 46.55.200, and 46.55.240; reenacting and amending RCW 46.55.010 and 46.63.020; adding new sections to chapter 46.55 RCW; creating a new section; recodifying RCW 46.61.567; repealing RCW 46.61.563; and prescribing penalties.

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

Sec. 1. Section 1, chapter 377, Laws of 1985 as amended by section 1, chapter 311, Laws of 1987 and by section 739, chapter 330, Laws of 1987 and RCW 46.55.010 are each reenacted and amended to read as follows:

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

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in ~~((his))~~ the operator's possession for ninety-six consecutive hours.

(2) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(3) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(4) "Junk vehicle" means a ~~((motor))~~ vehicle certified under RCW 46.55.230 as meeting all the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Is without a valid, current registration plate;

(e) Has a fair market value equal only to the value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prepared by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

~~((6))~~ (7) "Residential property" means property that has no more than four living units located on it.

~~((7))~~ (8) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

~~((8))~~ (9) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

~~((9))~~ (10) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

~~((10))~~ (11) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

~~((11))~~ (12) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

(a) Public locations:

(i) Constituting an accident or a traffic hazard as defined in RCW ~~((46.61.565))~~ 46.55.113 Immediately

(ii) On a highway and tagged as described in RCW ~~((46.52.170))~~ 46.55.085 24 hours

(iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately

(b) Private locations:

(i) On residential property Immediately

(ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately

- (iii) On private, nonresidential property,
not posted 24 hours

Sec. 2. Section 2, chapter 377, Laws of 1985 and RCW 46.55.020 are each amended to read as follows:

A person (~~(who engages)~~) shall not engage in or offer(~~(s)~~) to engage in the activities of a registered tow truck operator (~~(shall not do so)~~) without (~~(first obtaining)~~) a current registration certificate from the department of licensing authorizing him to engage in such activities. Any person engaging in or offering to engage in the activities of a registered tow truck operator without the registration certificate required by this chapter is guilty of a gross misdemeanor.

A registered operator who engages in a business practice that is prohibited under this chapter may be issued a notice of traffic infraction under chapter 46.63 RCW and is also subject to the civil penalties that may be imposed by the department under this chapter. A person found to have committed an offense that is a traffic infraction under this chapter is subject to a monetary penalty of at least two hundred fifty dollars. All traffic infractions issued under this chapter shall be under the jurisdiction of the district court in whose jurisdiction they were issued.

Sec. 3. Section 3, chapter 377, Laws of 1985 as amended by section 2, chapter 311, Laws of 1987 and RCW 46.55.030 are each amended to read as follows:

(1) Application for licensing as a registered tow truck operator shall be made on forms furnished by the department, shall be accompanied by an inspection certification from the Washington state patrol, shall be signed by the applicant or (~~(his)~~) an agent, and shall include the following information:

(a) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;

(b) The names and addresses of all persons having an interest in the business, or if the owner is a corporation, the names and addresses of the officers of the corporation;

(c) The names and addresses of all employees who serve as tow truck drivers;

(d) Proof of minimum insurance required by subsection (3) of this section;

(e) The vehicle license and vehicle identification numbers of all tow trucks of which the applicant is the registered owner;

(~~(f)~~) (f) Any other information the department may require; and

(~~((f))~~) (g) A certificate of approval from (~~(the chief of police if the applicant's principal place of business is located in a city or town having a population over five thousand persons or, in all other instances, from a member of)~~) the Washington state patrol(~~(:)~~) certifying that:

(i) The applicant has an established place of business and that mail is received at the address shown on the application;

(ii) The address of any storage locations where vehicles may be stored is correctly stated on the application;

(iii) The place of business has an office area that is accessible to the public without entering the storage area; and

~~((iii))~~ (iv) The place of business has adequate and secure storage facilities, as defined in this chapter and the rules of the department, where vehicles and their contents can be properly stored and protected.

(2) Before issuing a registration certificate to an applicant the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars running to the state and executed by a surety company authorized to do business in this state. The bond shall be approved as to form by the attorney general and conditioned that the operator shall conduct his business in conformity with the provisions of this chapter pertaining to abandoned or unauthorized vehicles, and to compensate any person, company, or the state for failure to comply with this chapter or the rules adopted hereunder, or for fraud, negligence, or misrepresentation in the handling of these vehicles. Any person injured by the tow truck operator's failure to fully perform duties imposed by this chapter and the rules adopted hereunder, or an ordinance or resolution adopted by a city, town, or county is entitled to recover actual damages, including reasonable attorney's fees against the surety and the tow truck operator. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. As a condition of authority to do business, the operator shall keep the bond in full force and effect. Failure to maintain the penalty value of the bond or cancellation of the bond by the surety automatically cancels the operator's registration.

(3) Before the department may issue a registration certificate to an applicant, the applicant shall provide proof of minimum insurance requirements of:

(a) One hundred thousand dollars for liability for bodily injury or property damage per occurrence; and

(b) Fifty thousand dollars of legal liability per occurrence, to protect against vehicle damage, including but not limited to fire and theft, from the time a vehicle comes into the custody of an operator until it is redeemed or sold.

Cancellation of or failure to maintain the insurance required by (a) and (b) of this subsection automatically cancels the operator's registration.

(4) The fee for each original registration and annual renewal is one hundred dollars per company, plus fifty dollars per truck. The department shall forward the registration fee to the state treasurer for deposit in the motor vehicle fund.

(5) The applicant must submit an inspection certificate from the state patrol before the department may issue or renew an operator's registration certificate or tow truck permits.

(6) Upon approval of the application, the department shall issue a registration certificate to the registered operator to be displayed prominently at the operator's place of business.

NEW SECTION. Sec. 4. A new section is added to chapter 46.55 RCW to read as follows:

(1) No registered tow truck operator may:

(a) Ask for or receive any compensation, gratuity, reward, or promise thereof from a person having control or possession of private property or from an agent of the person authorized to sign an impound authorization, for or on account of the impounding of a vehicle;

(b) Be beneficially interested in a contract, agreement, or understanding that may be made by or between a person having control or possession of private property and an agent of the person authorized to sign an impound authorization;

(c) Have a financial, equitable, or ownership interest in a firm, partnership, association, or corporation whose functions include acting as an agent or a representative of a property owner for the purpose of signing impound authorizations.

(2) This section does not prohibit the registered tow truck operator from collecting the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing of an impounded vehicle as provide by RCW 46.55.120.

(3) A violation of this section is a gross misdemeanor.

Sec. 5. Section 4, chapter 377, Laws of 1985 and RCW 46.55.040 are each amended to read as follows:

(1) A registered operator shall apply for and keep current a tow truck permit for each tow truck of which the operator is the registered owner. Application for a tow truck permit shall be accompanied by a report from the Washington state patrol covering a physical inspection of each tow truck ~~((to be))~~ capable of being used by the applicant.

(2) Upon receipt of the fee provided in RCW 46.55.030(4) and a satisfactory inspection report from the state patrol, the department shall issue each tow truck an annual tow truck permit or decal. The class of the tow truck, determined according to RCW 46.55.050, shall be stamped on the permit or decal. The permit or decal shall be displayed on the passenger side of the truck's front windshield.

(3) A tow truck number from the department shall be affixed in a permanent manner to each tow truck.

(4) The Washington state patrol shall conduct annual inspections of tow truck operators' equipment and facilities during the operators' normal business hours. Unscheduled inspections may be conducted without notice

at the operator's place of business by an inspector to determine the fitness of a tow truck or facilities. At the time of the inspection, the operator shall provide a paper copy of the master log referred to in RCW 46.55.080.

(5) If at the time of the annual or subsequent inspections the equipment does not meet the requirements of this chapter, and the deficiency is a safety related deficiency, or the equipment is necessary to the truck's performance, the inspector shall cause the registered tow truck operator to remove that equipment from service as a tow truck until such time as the equipment has been satisfactorily repaired. A red tag shall be placed on the windshield of a tow truck taken out of service, and the tow truck shall not provide tow truck service until the Washington state patrol recertifies the truck and removes the tag.

Sec. 6. Section 6, chapter 377, Laws of 1985 as amended by section 3, chapter 311, Laws of 1987 and RCW 46.55.060 are each amended to read as follows:

(1) The address that the tow truck operator lists on his or her application shall be the business location of the firm where its files are kept. Each separate business location requires a separate registration under this chapter. The application shall also list all locations of secure areas for vehicle storage and redemption.

(2) Before an additional lot may be used for vehicle storage, it must be inspected and approved by the state patrol. The lot must also be inspected and approved on an annual basis for continued use.

(3) Each business location must have a sign displaying the firm's name that is readable from the street.

(4) At the business locations listed where vehicles may be redeemed, the registered operator shall post in a conspicuous and accessible location:

(a) All pertinent licenses and permits to operate as a registered tow truck operator;

(b) The current towing and storage charges itemized on a form approved by the department;

(c) The vehicle redemption procedure and rights;

(d) Information supplied by the department as to where complaints regarding either equipment or service are to be directed;

(e) Information concerning the acceptance of commercially reasonable tender as defined in RCW 46.55.120(1)(b).

~~((3) Ten days before the effective date of any change in an operator's fee schedule, the registered tow truck operator shall file the revised fee schedule with the department.~~

~~((4))~~ (5) The department shall adopt rules concerning fencing and security requirements of storage areas, which may provide for modifications or exemptions where needed to achieve compliance with local zoning laws.

~~((5))~~ (6) On any day when the registered tow truck operator holds the towing services open for business, the business office shall remain open

with personnel present who are able to release impounded vehicles in accordance with this chapter and the rules adopted under it. The normal business hours of a towing service shall be from 8:00 a.m. to 5:00 p.m. on weekdays, excluding Saturdays, Sundays, and holidays.

~~((6))~~ (7) A registered tow truck operator shall maintain personnel who can be contacted twenty-four hours a day to release impounded vehicles within a reasonable time.

~~((7) Towing contracts with private property owners shall be in written form and state the hours of authorization to impound, the persons empowered to authorize such impounds, and the present charge of a private impound for the classes of tow trucks to be used in such impound, and shall be retained in the files of the registered tow truck operator for three years.~~

~~(8) Any fee that is charged for the storage of a vehicle shall be calculated on a twenty-four hour basis, and shall be charged to the nearest half day from the time the vehicle arrived at the secure storage area.~~

~~(9) All billing invoices that are provided to the redeemer of the vehicle shall be itemized so that the individual fees are clearly discernable.))~~

(8) A registered operator shall provide access to a telephone for any person redeeming a vehicle, at the time of redemption.

NEW SECTION. Sec. 7. A new section is added to chapter 46.55 RCW to read as follows:

(1) An operator shall file a fee schedule with the department. All filed fees must be adequate to cover the costs of service provided. No fees may exceed those filed with the department. At least ten days before the effective date of any change in an operator's fee schedule, the registered tow truck operator shall file the revised fee schedule with the department.

(2) Towing contracts with private property owners shall be in written form and state the hours of authorization to impound, the persons empowered to authorize the impounds, and the present charge of a private impound for the classes of tow trucks to be used in the impound, and must be retained in the files of the registered tow truck operator for three years.

(3) A fee that is charged for tow truck service must be calculated on an hourly basis, and after the first hour must be charged to the nearest quarter hour.

(4) A fee that is charged for the storage of a vehicle must be calculated on a twenty-four hour basis and must be charged to the nearest half day from the time the vehicle arrived at the secure storage area.

(5) All billing invoices that are provided to the redeemer of the vehicle must be itemized so that the individual fees are clearly discernable.

Sec. 8. Section 8, chapter 377, Laws of 1985 as amended by section 5, chapter 311, Laws of 1987 and RCW 46.55.080 are each amended to read as follows:

(1) If a vehicle is in violation of the time restrictions of RCW 46.55.010(12), it may be impounded by a registered tow truck operator at

the direction of a law enforcement officer or other public official with jurisdiction if the vehicle is on public property, or at the direction of the property owner or ~~((his))~~ an agent if it is on private property. A law enforcement officer may also direct the impoundment of a vehicle pursuant to a writ or court order.

(2) The person requesting a private impound or a law enforcement officer or public official requesting a public impound shall provide a signed authorization for the impound at the time and place of the impound to the registered tow truck operator before the operator may proceed with the impound. A registered tow truck operator, employee, or his or her agent may not serve as an agent of a property owner for the purposes of signing an impound authorization or, independent of the property owner, identify a vehicle for impound.

(3) In the case of a private impound, the impound authorization shall include the following statement: "A person authorizing this impound, if the impound is found in violation of chapter 46.55 RCW, may be held liable for the costs incurred by the vehicle owner."

(4) A registered tow truck operator shall record and keep in the operator's files the date and time that a vehicle is put in the operator's custody and released. The operator shall make an entry into a master log regarding transactions relating to impounded vehicles. The operator shall make this master log available, upon request, to representatives of the department or the state patrol.

(5) A person who engages in or offers to engage in the activities of a registered tow truck operator may not be associated in any way with a person or business whose main activity is authorizing the impounding of vehicles.

Sec. 9. Section 10, chapter 377, Laws of 1985 as amended by section 8, chapter 311, Laws of 1987 and RCW 46.55.100 are each amended to read as follows:

(1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports~~((, unless the impoundment was requested by that))~~. A law enforcement agency shall immediately provide to a requesting operator the name and address of the legal and registered owners of the vehicle, the vehicle identification number, and any other necessary, pertinent information. The initial notice of impoundment shall be followed by a written notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle in the operator's possession after the ninety-six hour abandonment period. Such report need not be sent when the

impoundment is pursuant to a writ, court order, or police hold. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle to the crime information center of the Washington state patrol.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle for the vehicle identification number and check the necessary records to determine the vehicle's owners.

Sec. 10. Section 11, chapter 377, Laws of 1985 as amended by section 9, chapter 311, Laws of 1987 and RCW 46.55.110 are each amended to read as follows:

(1) ~~((In the case of))~~ When an unauthorized vehicle is impounded ~~((from public property, the law enforcement agency or other public official directing the impoundment, or in the case of a vehicle impounded from private property)),~~ the impounding towing operator~~(:)~~ shall notify the legal and registered owners of the impoundment of the unauthorized vehicle. The notification shall be sent by first-class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, as provided by the law enforcement agency, and shall inform the owners of the identity of the person or agency authorizing the impound. The notification shall include the name of the impounding tow firm, its address, and telephone number. The notice shall also include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impoundment pursuant to RCW 46.55.120.

(2) In the case of an abandoned vehicle, within twenty-four hours after receiving information on the vehicle owners from the department through the abandoned vehicle report, the tow truck operator shall send by certified mail, with return receipt requested, a notice of custody and sale to the legal and registered owners.

(3) No notices need be sent to the legal or registered owners of an impounded vehicle if the vehicle has been redeemed.

Sec. 11. Section 12, chapter 377, Laws of 1985 as amended by section 12, chapter 311, Laws of 1987 and RCW 46.55.120 are each amended to read as follows:

(1) Vehicles impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle, or one who has purchased a vehicle from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2) (a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not

received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, ~~((and))~~ the registered and legal owners of the vehicle, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be ~~((invalid))~~ in violation of this chapter, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage fees, and any bond or other security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$....., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees

and costs will be awarded against you under RCW ... if the judgment is not paid within 15 days of the date of this notice.

DATED this ... day of ..., 19

Signature

Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle may be redeemed at any time before the start of the auction upon payment of towing and storage fees.

Sec. 12. Section 13, chapter 377, Laws of 1985 as amended by section 13, chapter 311, Laws of 1987 and RCW 46.55.130 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(2) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. The notice shall contain a description of the vehicle including the make, model, year, and license number and a notification that a three-hour public viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

~~((g))~~ (h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

~~((h))~~ (i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within thirty days sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4) (a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(2).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available.

Sec. 13. Section 14, chapter 377, Laws of 1985 as amended by section 14, chapter 311, Laws of 1987 and RCW 46.55.140 are each amended to read as follows:

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of three hundred dollars less the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of

one thousand dollars less the amount bid at auction, unless the impound is determined to be invalid. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12-.101 is relieved of liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter.

Sec. 14. Section 15, chapter 377, Laws of 1985 as amended by section 15, chapter 311, Laws of 1987 and RCW 46.55.150 are each amended to read as follows:

The registered tow truck operator shall keep a transaction file on each vehicle. The transaction file shall contain as a minimum those of the following items that are required at the time the vehicle is redeemed or becomes abandoned and is sold at a public auction:

(1) A signed impoundment authorization as required by RCW 46.55.080;

(2) A record of the twenty-four hour written impound notice to a law enforcement agency;

(3) A copy of the impoundment notification to registered and legal owners, sent within twenty-four hours of impoundment, that advises the owners of the address of the impounding firm, a twenty-four hour telephone number, and the name of the person or agency under whose authority the vehicle was impounded;

(4) A copy of the abandoned vehicle report that was sent to and returned by the department;

(5) A copy and proof of mailing of the notice of custody and sale sent by the registered tow truck operator to the owners advising them they have fifteen days to redeem the vehicle before it is sold at public auction;

(6) A copy of the published notice of public auction;

(7) A copy of the affidavit of sale showing the sales date, purchaser, amount of the lien, and sale price;

(8) A record of the two highest bid offers on the vehicle, with the names, addresses, and telephone numbers of the two bidders;

(9) A copy of the notice of opportunity for hearing given to those who redeem vehicles;

(10) An itemized invoice of charges against the vehicle.

The transaction file shall be kept for a minimum of three years.

Sec. 15. Section 18, chapter 377, Laws of 1985 as amended by section 742, chapter 330, Laws of 1987 and RCW 46.55.180 are each amended to read as follows:

The director or the chief of the state patrol may use a hearing officer or administrative law judge for presiding over a hearing regarding ~~((infrac-tions by registered tow truck operators of))~~ licensing provisions under this chapter~~((; chapter 46.37 RCW;))~~ or rules adopted ~~((thereunder))~~ under it.

Sec. 16. Section 20, chapter 377, Laws of 1985 and RCW 46.55.200 are each amended to read as follows:

A registered tow truck operator's license may be denied, suspended, or revoked, or the licensee may be ordered to pay a monetary penalty of a civil nature, not to exceed one thousand dollars per violation, or the licensee may be subjected to any combination of license and monetary penalty, whenever the director has reason to believe the licensee has committed, or is at the time committing, a violation of this chapter or rules adopted under it or any other statute or rule relating to the title or disposition of vehicles or vehicle hulks, including but not limited to:

(1) Towing any abandoned vehicle without first obtaining and having in ~~((his))~~ the operator's possession at all times while transporting it, appropriate evidence of ownership or an impound authorization properly executed by the private person or public official having control over the property on which the unauthorized vehicle was found;

(2) Forging the signature of the registered or legal owner on a certificate of title, or forging the signature of any authorized person on documents pertaining to unauthorized or abandoned vehicles or automobile hulks;

(3) Failing to comply with the statutes and rules relating to the processing and sale of abandoned vehicles;

(4) Failing to accept bids on any abandoned vehicle offered at public sale;

(5) Failing to transmit to the state surplus funds derived from the sale of an abandoned vehicle;

(6) Selling, disposing of, or having in his possession, without notifying law enforcement officials, a vehicle that he knows or has reason to know has been stolen or illegally appropriated without the consent of the owner;

(7) Failing to comply with the statutes and rules relating to the transfer of ownership of vehicles or other procedures after public sale; or

(8) Failing to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after the assessment becomes final.

All orders by the director made under this chapter are subject to the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

Sec. 17. Section 24, chapter 377, Laws of 1985 as amended by section 20, chapter 311, Laws of 1987 and RCW 46.55.240 are each amended to read as follows:

(1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

~~((c))~~ (d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of unauthorized junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property

or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles.

NEW SECTION. Sec. 18. A new section is added to chapter 46.55 RCW to read as follows:

This chapter does not apply to the state department of transportation to the extent that it may remove vehicles that are traffic hazards from bridges and the mountain passes without prior authorization. If such a vehicle is removed, the department shall immediately notify the appropriate local law enforcement agency, and the vehicle shall be processed in accordance with RCW 46.55.110.

NEW SECTION. Sec. 19. The department of licensing and the Washington state patrol shall conduct a study of the fees charged for registration of tow truck operators and tow trucks and the costs of administering the tow truck operator program in the department and the Washington state patrol to determine what fees would be necessary to defray the program costs. The department and the state patrol shall report the study findings to the legislative transportation committee by December 1, 1989.

Sec. 20. Section 3, chapter 186, Laws of 1986 as amended by section 2, chapter 181, Laws of 1987, by section 55, chapter 244, Laws of 1987, by section 6, chapter 247, Laws of 1987 and by section 11, chapter 388, Laws

of 1987 and RCW 46.63.020 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

~~((8) RCW 46.16.011 relating to permitting unauthorized persons to drive;))~~

(9) RCW 46.16.381(8) relating to unauthorized acquisition of a special decal, license plate, or card for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.416 relating to driving while in a suspended or revoked status;

(15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(17) Chapter 46.29 RCW relating to financial responsibility;

- (18) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (19) RCW 46.48.175 relating to the transportation of dangerous articles;
- (20) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (21) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (22) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (23) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (24) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (25) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (26) Section 4 of this act relating to prohibited practices by tow truck operators;
- (27) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- ~~((27))~~ (28) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- ~~((28))~~ (29) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- ~~((29))~~ (30) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- ~~((30))~~ (31) RCW 46.61.500 relating to reckless driving;
- ~~((31))~~ (32) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- ~~((32))~~ (33) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- ~~((33))~~ (34) RCW 46.61.522 relating to vehicular assault;
- ~~((34))~~ (35) RCW 46.61.525 relating to negligent driving;
- ~~((35))~~ (36) RCW 46.61.530 relating to racing of vehicles on highways;
- ~~((36))~~ (37) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- ~~((37))~~ (38) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- ~~((38))~~ (39) RCW 46.64.020 relating to nonappearance after a written promise;
- ~~((39))~~ (40) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((40))~~ (41) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((41))~~ (42) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((42))~~ (43) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((43))~~ (44) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((44))~~ (45) Chapter 46.82 RCW relating to driver's training schools;

~~((45))~~ (46) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

~~((46))~~ (47) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

NEW SECTION. Sec. 21. Section 2, chapter 167, Laws of 1977 ex. sess., section 743, chapter 330, Laws of 1987 and RCW 46.61.563 are each repealed.

NEW SECTION. Sec. 22. RCW 46.61.567 is recodified as a section in chapter 46.55 RCW.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 112

[Substitute Senate Bill No. 5641]

VESSEL RETAIL INSTALLMENT SALES CONTRACTS—SERVICE CHARGES

AN ACT Relating to service charges on vessel retail installment contracts; and amending RCW 63.14.130 and 63.14.135.

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

Sec. 1. Section 13, chapter 236, Laws of 1963 as last amended by section 1, chapter 318, Laws of 1987 and RCW 63.14.130 are each amended to read as follows:

The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) Except as provided in subsections (2) and (3) of this section, the service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yields (as published by the Federal Reserve Bank of San Francisco) of the bill rates for twenty-six week treasury bills for the last market auctions conducted during February, May, August, and November of the year prior to the year in which the retail installment contract is executed; or

(b) Ten dollars.

(2) The service charge in a retail installment contract for the purchase of a motor vehicle shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yield (as published by the Federal Reserve Bank of San Francisco) of the bill rate for twenty-six week treasury bills for the last market auction conducted during February, May, August, or November, as the case may be, prior to the quarter in which the retail installment contract for purchase of the motor vehicle is executed; or

(b) Ten dollars.

As used in this subsection, "motor 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 for devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(3) The service charge in a retail installment contract for the purchase of a vessel shall not exceed the highest of the following:

(a) A rate on outstanding balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yield, as published by the federal reserve bank of San Francisco, of the bill rate for twenty-six week treasury bills for the last market auction conducted prior to the quarter in which the retail installment contract for purchase of the vessel is expected; or

(b) Ten dollars.

As used in this subsection, "vessel" means any watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(4) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed one and one-half percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

~~((4))~~ (5) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance,

provided the median amount is used in computing the service charge for all balances within such range.

Sec. 2. Section 2, chapter 60, Laws of 1986 as amended by section 1, chapter 72, Laws of 1988 and RCW 63.14.135 are each amended to read as follows:

(1) On or before December 5th of each year the state treasurer shall compute the maximum service charge allowed under a retail installment contract or charge agreement under RCW 63.14.130(1)(a) for the succeeding calendar year. The treasurer shall file this charge with the state code reviser for publication in the first issue of the Washington State Register for the succeeding calendar year in compliance with RCW 34.08.020.

(2) On or before the first Wednesday of the last month of each calendar quarter the state treasurer shall compute the maximum service charge allowed for a retail installment contract for the purchase of a motor vehicle or vessel pursuant to RCW 63.14.130(2)(a) and (3)(a) respectively for the succeeding calendar quarter. The treasurer shall file this charge with the state code reviser for publication in the first issue of the Washington State Register for the succeeding calendar quarter in compliance with RCW 34.08.020.

Passed the Senate March 9, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 113

[Senate Bill No. 5987]

STATE VEHICLES—FIELD TESTING OF ALTERNATIVE FUELS AUTHORIZED

AN ACT Relating to use of alternative fuels; and amending RCW 43.19.570.

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

Sec. 1. Section 4, chapter 167, Laws of 1975 1st ex. sess. as amended by section 11, chapter 163, Laws of 1982 and RCW 43.19.570 are each amended to read as follows:

(1) The department shall direct and be responsible for the acquisition, operation, maintenance, storage, repair, and replacement of state motor vehicles under its control. The department shall utilize state facilities available for the maintenance, repair, and storage of such motor vehicles, and may provide directly or by contract for the maintenance, repair, and servicing of all motor vehicles, and other property related thereto and under its control(;;).

(2) The department may arrange, by agreement with agencies, for the utilization by one of the storage, repair, or maintenance facilities of another,

with such provision for charges and credits as may be agreed upon. The department may acquire and maintain storage, repair, and maintenance facilities for the motor vehicles under its control from such funds as may be appropriated by the legislature.

(3) (a) The legislature finds that a clean environment is important and that global warming effects may be offset by decreasing the emissions of harmful compounds from motor vehicles. The legislature further finds that the state is in a position to set an example of large scale use of alternative fuels in motor vehicles.

(b) The department shall consider the use of state vehicles to conduct field tests on alternative fuels in areas where air pollution constraints may be eased by these optional fuels. These fuels should include but are not limited to gas-powered and electric-powered vehicles.

(c) For planned purchases of vehicles using alternative fuels, the department and other state agencies shall explore opportunities to purchase these vehicles together with the federal government, agencies of other states, other Washington state agencies, local governments, or private organizations for less cost.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 114

[Substitute House Bill No. 1252]

REGISTERED NURSES—LICENSING REQUIREMENTS AND BOARD OF NURSING MEMBERSHIP AND ORGANIZATION

AN ACT Relating to registered nurses; amending RCW 18.88.030, 18.88.050, 18.88.070, 18.88.130, 18.88.140, 18.88.150, 18.88.280, and 18.88.285; and repealing RCW 18.88.180 and 18.88.185.

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

Sec. 1. Section 4, chapter 202, Laws of 1949 as last amended by section 69, chapter 158, Laws of 1979 and RCW 18.88.030 are each amended to read as follows:

Whenever used in this chapter, terms defined in this section shall have the meanings herein specified unless the context clearly indicates otherwise.

The practice of nursing means the performance of acts requiring substantial specialized knowledge, judgment and skill based upon the principles of the biological, physiological, behavioral and sociological sciences in either:

(1) The observation, assessment, diagnosis, care or counsel, and health teaching of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others.

(2) The performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by nurses licensed under this chapter and which shall be authorized by the board of nursing through its rules and regulations.

(3) The administration, supervision, delegation and evaluation of nursing practice: PROVIDED, HOWEVER, That nothing herein shall affect the authority of any hospital, hospital district, medical clinic or office, concerning its administration and supervision.

(4) The teaching of nursing.

(5) The executing of medical regimen as prescribed by a licensed physician, osteopathic physician, dentist, or ((chiroprapist)) podiatrist.

Nothing in this chapter shall be construed as prohibiting any person from practicing any profession for which a license shall have been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This chapter shall not be construed as prohibiting the nursing care of the sick, without compensation, by any unlicensed person who does not hold herself or himself out to be a registered nurse, and further, this chapter shall not be construed as prohibiting the practice of practical nursing by any practical nurse, with or without compensation in either homes or hospitals.

The word "board" means the Washington state board of nursing.

The term "department" means the department of licensing.

The word "diagnosis", in the context of nursing practice, means the identification of, and discrimination between, the person's physical and psycho-social signs and symptoms which are essential to effective execution and management of the nursing care regimen.

The term "diploma" means written official verification of completion of an approved nursing education program.

The term "director" means the director of licensing or the director's designee.

The terms "nurse" or "nursing" wherever they occur in this chapter, unless otherwise specified, for the purposes of this chapter shall mean a registered nurse or registered nursing.

Sec. 2. Section 5, chapter 202, Laws of 1949 as amended by section 4, chapter 133, Laws of 1973 and RCW 18.88.050 are each amended to read as follows:

The state board of nursing(~~((, after July 1, 1973;))~~) shall consist of seven members(~~(;) to be appointed by the governor((, two of whom shall be appointed for a term of two years, two for a term of four years, and three for a term of five years. Thereafter)).~~ All appointments shall be for terms of five years. ((The terms of board members in office at the time of the effective date of this 1973 amendatory act shall end June 30, 1973:))) No person shall serve as a member of the board for more than two consecutive terms.

The governor may remove any member from the board for neglect of any duty required by law, or for incompetency or unprofessional (~~or dishonorable~~) conduct as defined in chapter 18.130 RCW. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as herein provided.

Sec. 3. Section 7, chapter 202, Laws of 1949 as amended by section 6, chapter 133, Laws of 1973 and RCW 18.88.070 are each amended to read as follows:

The board shall (~~meet~~) annually (~~and at its annual meeting shall~~) elect from among its members a (~~chairman~~) chairperson and a (~~secretary~~) vice-chairperson. The board shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board (~~(including one officer)~~) shall constitute a quorum at any meeting. All meetings of the board shall be open and public except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

Sec. 4. Section 13, chapter 202, Laws of 1949 as last amended by section 12, chapter 133, Laws of 1973 and RCW 18.88.130 are each amended to read as follows:

An applicant for a license to practice as a registered nurse shall submit to the board (1) an attested written application on department form; (2) written official evidence of diploma from an approved school of nursing; and (3) any other official records specified by the board. The applicant at the time of such submission shall not be in violation of (~~RCW 18.88.230 as now or hereafter amended~~) chapter 18.130 RCW or any (~~other~~) provision of this chapter.

The board, by regulation, shall establish criteria for evaluating the education of all applicants.

Sec. 5. Section 14, chapter 202, Laws of 1949 as last amended by section 13, chapter 133, Laws of 1973 and RCW 18.88.140 are each amended to read as follows:

The applicant shall be required to pass a written examination in such subjects as the board shall determine. Each written examination may be supplemented by an oral or practical examination. The board shall establish the standards for passing.

Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing pending notification of the results of the first licensing examination following verification of diploma from an approved school of nursing. Upon the applicant passing the examination, the department shall issue to the applicant a license to practice as a registered nurse. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. (~~Those applicants who fail the first examination shall be allowed to submit themselves for one~~

~~subsequent examination without payment of any additional fee if such examination is to be held within one year of the first failure:))~~ The board shall establish, by rule and regulation, the requirements necessary to qualify for reexamination of applicants who have failed.

Sec. 6. Section 15, chapter 202, Laws of 1949 as last amended by section 5, chapter 211, Laws of 1988 and RCW 18.88.150 are each amended to read as follows:

Upon board approval of the application, the department shall issue a license by endorsement to practice nursing as a registered nurse without examination to an applicant who is duly licensed as a registered nurse by examination under the laws of another state, territory or possession of the United States and who meets all other qualifications for licensure.

An applicant graduated from a school of nursing outside the United States and licensed by a country outside the United States shall meet all qualifications required by this chapter and by the board and shall pass examinations as determined by the board.

Sec. 7. Section 28, chapter 202, Laws of 1949 as last amended by section 1, chapter 37, Laws of 1988 and RCW 18.88.280 are each amended to read as follows:

This chapter shall not be construed as (1) prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice professional nursing within the meaning of this chapter, (2) or preventing any person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency; (3) nor shall it be construed as prohibiting such practice of nursing by students enrolled in approved schools as may be incidental to their course of study nor shall it prohibit such students working as nursing aides; (4) nor shall it be construed as prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing service including those duties which involve minor nursing services for persons performed in hospitals, nursing homes or elsewhere under the direction of licensed physicians or the supervision of licensed, registered nurses; (5) nor shall it be construed as prohibiting or preventing the practice of nursing in this state by any legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself or herself out as a nurse licensed to practice in this state; (6) nor shall it be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by adherents thereof so long as they do not engage in the practice of nursing as defined in this chapter; (7) nor shall it be

construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his or her official duties; (8) permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof; (9) permitting the prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics; (10) permitting the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye; (11) prohibiting the performance of routine visual screening; (12) permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively; (13) permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine; (14) permitting the practice of ((chiroprody)) podiatry as defined in chapter 18.22 RCW; (15) permitting the performance of major surgery, except such minor surgery as the board may have specifically authorized by rule or regulation duly adopted in accordance with the provisions of chapter ((34.04)) 34.05 RCW; (16) permitting the prescribing of controlled substances as defined in schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW; (17) prohibiting the determination and pronouncement of death.

Sec. 8. Section 14, chapter 288, Laws of 1961 as last amended by section 28, chapter 133, Laws of 1973 and RCW 18.88.285 are each amended to read as follows:

A registered nurse under her or his license may perform for compensation nursing care (as that term is usually understood) of the ill, injured or infirm, and in the course thereof, she or he is authorized to do the following things which shall not be done by any person not so licensed, except as provided in RCW 18.78.182:

(1) At or under the general direction of a licensed physician, dentist, osteopath or ((chiroprodist)) podiatrist (acting within the scope of his or her license) to administer medications, treatments, tests and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required.

(2) To delegate to other persons engaged in nursing, the functions outlined in the preceding paragraph.

(3) To perform specialized and advanced levels of nursing as defined by the board.

(4) To instruct students of nursing in technical subjects pertaining to nursing.

(5) To hold herself or himself out to the public or designate herself or himself as a registered nurse or nurse.

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) Section 18, chapter 202, Laws of 1949, section 17, chapter 133, Laws of 1973 and RCW 18.88.180; and

(2) Section 16, chapter 288, Laws of 1961 and RCW 18.88.185.

Passed the House February 27, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 115

[Senate Bill No. 5393]

NURSES—EDUCATIONAL ASSISTANCE—INSTITUTION DEFINED

AN ACT Relating to educational assistance for nurses; and amending RCW 28B.104.020.

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

Sec. 1. Section 2, chapter 242, Laws of 1988 and RCW 28B.104.020 are each amended to read as follows:

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

(1) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders nursing service as a nurse serving in a nurse shortage area, as defined by the state health coordinating council.

(2) "Institution of higher education" or "institution" means a community college, vocational-technical school, college, or university in the state of Washington which is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(3) "Board" means the higher education coordinating board.

(4) "Eligible student" means a student who has been accepted into a program leading to eligibility for licensure as a licensed practical nurse, or to a program leading to an associate, baccalaureate, or higher degree in nursing or continues satisfactory progress within the program; and has a declared intention to serve in a nurse shortage area upon completion of the educational program.

(5) "Nurse shortage area" means those areas where nurses are in short supply as a result of geographic maldistribution; or specialty areas of nursing, such as geriatrics or critical care, where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The state health coordinating council shall determine nurse shortage areas in the state guided by federal standards of "health manpower shortage areas."

(6) "Forgiven" or "to forgive" or "forgiveness" means to render nursing service in a nurse shortage area in the state of Washington in lieu of monetary repayment.

(7) "Satisfied" means paid-in-full.

(8) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

Passed the Senate March 8, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 116

[Senate Bill No. 5137]

SCHOOL NURSES—TRANSFER OF CITY RETIREMENT ACCOUNTS TO TEACHERS' RETIREMENT SYSTEM

AN ACT Relating to portability of pension benefits for school nurses; adding new sections to chapter 41.32 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The provisions of sections 2 and 3 of this act shall apply only to a member who:

- (1) Is employed as a school nurse after the effective date of this act;
- (2) Has previously held a position with a public health department in the city of Seattle, Spokane, or Tacoma; and
- (3) Has received credit in the Seattle, Spokane, or Tacoma city employee retirement system for his or her service.

NEW SECTION. Sec. 2. (1) A member who fulfills the requirements of section 1 of this act shall have the option of transferring his or her service credit in the Seattle, Spokane, or Tacoma city employee retirement system to the Washington state teachers' retirement system.

(2) A member who fulfills the requirements of section 1 of this act and has withdrawn contributions from the Seattle, Spokane, or Tacoma city employee retirement system may restore the contributions, together with interest since the date of withdrawal as determined by the system, and recover the service represented by the contributions. Restoration must be completed by December 31, 1990.

NEW SECTION. Sec. 3. (1) In order to make a transfer authorized by section 2 of this act, the member must file a written declaration no later than December 31, 1990, with both the department and the city employee retirement system indicating the member's desire to make an irrevocable transfer of credit.

(2) Upon receipt of the written declaration the city employee retirement system shall send the department a report of the member's service

credit. It shall also transfer to the department an amount equal to employer and member contributions, plus interest. The city employee retirement system shall send the service credit report and transfer of contributions within ninety days of receiving the member's written declaration.

(3) A member who transfers service credit under this section is eligible to receive service credit for all periods of employment with the public health department. If credit was not given to a member under the member's city retirement system for a period of employment for which credit would have been granted under this chapter, the member may obtain credit for those periods if he or she makes the employer and member contributions for such service, plus interest as determined by the department, no later than December 31, 1990.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act are each added to chapter 41.32 RCW.

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

Passed the Senate March 3, 1989.
Passed the House April 6, 1989.
Approved by the Governor April 20, 1989.
Filed in Office of Secretary of State April 20, 1989.

CHAPTER 117

[Senate Bill No. 5715]

IMMIGRATION ASSISTANTS—PRACTICE AND CONDUCT RULES

AN ACT Relating to immigration assistants; amending RCW 2.48.180; adding a new chapter to Title 19 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds and declares that assisting persons regarding immigration matters substantially affects the public interest. The practices of immigration assistants have a significant impact on the residents of the state of Washington. It is the intent of the legislature to establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence.

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

(1) "Immigration assistant" means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:

(a) Transcribing responses to a government agency form selected by the customer which is related to an immigration matter, but does not include advising a person as to his or her answers on those forms;

(b) Translating a person's answer to questions posed on those forms;

(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;

(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.

(2) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person which arises under immigration and naturalization law, executive order, or presidential proclamation, or which arises under action of the United States immigration and naturalization service, the United States department of labor, or the United States department of state.

(3) "Compensation" means money, property, or anything else of value.

NEW SECTION. Sec. 3. The following persons are exempt from all provisions of this chapter:

(1) An attorney licensed to practice law in this state where such attorney renders services in the course of his or her practice as an attorney and a legal intern, as described by court rule, or paralegal employed by and under the direct supervision of such an attorney;

(2) A nonprofit corporation or clinic affiliated with a law school in this state that provides immigration consulting services to clients without charge beyond a request for reimbursement of the corporation's or clinic's reasonable costs relating to providing immigration services to that client. "Reasonable costs" include, but are not limited to, the costs of photocopying, telephone calls, document requests, and the filing fees for immigration forms.

NEW SECTION. Sec. 4. Any person who wishes to engage in the business of an immigration assistant must register with the secretary of state's office and provide his or her name, business address, home address, and business and home telephone numbers.

NEW SECTION. Sec. 5. Immigration assistants who have registered must inform the secretary of state of any changes in their name, addresses, or telephone numbers within thirty days of the change.

NEW SECTION. Sec. 6. Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in section 2 of this act.

NEW SECTION. Sec. 7. (1) Before providing any assistance, an immigration assistant who has agreed to provide immigration assistance to a customer shall provide the customer with a written contract that includes the following provisions:

- (a) An explanation of the services to be performed;
 - (b) Identification of all compensation and costs to be charged to the customer for the services to be performed;
 - (c) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the assistant for any purpose, including payment of compensation or costs;
 - (d) A statement that the immigration assistant is not an attorney and may not perform legal services. This statement shall be on the face of the contract in ten-point bold type print; and
 - (e) A statement that the customer has seventy-two hours to rescind the contract. This statement shall be conspicuously set forth in the contract.
- (2) The written contract shall be stated in both English and in the language of the customer.
- (3) A copy of the written contract shall be provided to the customer by the immigration assistant upon execution of the contract.
- (4) A customer has the right to rescind a contract within seventy-two hours of the signing of the contract.
- (5) Any documents identified in subsection (1)(c) of this section shall be returned upon demand of the customer.

NEW SECTION. Sec. 8. In the course of dealing with customers or prospective customers, an immigration assistant shall not:

- (1) Make any statement that the immigration assistant can or will obtain special favors from or has special influence with the United States immigration and naturalization service;
- (2) Retain any compensation for services not performed;
- (3) Refuse to return documents supplied by, prepared by, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;
- (4) Represent or advertise, in connection with the provision of immigration assistance, other titles or credentials, including but not limited to "notary public" or "immigration consultant" that could cause a customer to believe that the immigration assistant possesses special professional skills;
- (5) Communicate in any manner, oral or written, that registration under this chapter is an indicator of special skill or expertise or that it allows the person to provide advice on an immigration matter;
- (6) Give any legal advice concerning an immigration matter.

NEW SECTION. Sec. 9. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020.

NEW SECTION. Sec. 10. A violation of this chapter shall be punished as a gross misdemeanor according to chapter 9A.20 RCW.

NEW SECTION. Sec. 11. This chapter shall be known and cited as the "immigration assistant practices act."

NEW SECTION. Sec. 12. Sections 1 through 11 of this act shall constitute a new chapter in Title 19 RCW.

Sec. 13. Section 14, chapter 94, Laws of 1933 and RCW 2.48.180 are each amended to read as follows:

Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this chapter provided, shall practice law, or hold himself out as entitled to practice law, shall, except as provided in section 10 of this 1989 act, be guilty of a misdemeanor: **PROVIDED, HOWEVER,** Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 118

[Senate Bill No. 6057]

HOMELESS CHILDREN—SCHOOL ENROLLMENTS—PROOF OF RESIDENCY NOT REQUIRED

AN ACT Relating to the education of homeless children; and adding a new section to chapter 28A.58 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.58 RCW to read as follows:

(1) A school district shall not require proof of residency or any other information regarding an address for any child who is eligible by reason of age for the services of the school district if the child does not have a legal residence.

(2) A school district shall enroll a child without a legal residence under subsection (1) of this section at the request of the child or parent or guardian of the child.

Passed the Senate March 8, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 119

[Substitute Senate Bill No. 5481]

IMPAIRED PHYSICIAN PROGRAM—EDUCATION AND PREVENTION SERVICES

AN ACT Relating to the impaired physician program; amending RCW 18.72.301 and 18.72.306; making an appropriation; and declaring an emergency.

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

Sec. 1. Section 1, chapter 416, Law of 1987 and RCW 18.72.301 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 18.72.306 through 18.72.321.

(1) "Board" means the medical disciplinary board of this state.

(2) "Committee" means a nonprofit corporation formed by physicians who have expertise in the areas of alcoholism, drug abuse, or mental illness and who broadly represent the physicians of the state and that has been designated to perform any or all of the activities set forth in RCW 18.72.306(1) pursuant to rules adopted by the board under chapter (~~34-04~~) 34.05 RCW.

(3) "Impaired" or "impairment" means the presence of the diseases of alcoholism, drug abuse, (~~or~~) mental illness, or other debilitating conditions.

(4) "Impaired physician program" means the program for the prevention, detection, intervention, and monitoring of impaired physicians established by the board pursuant to RCW 18.72.306(1).

(5) "Physician" means a person licensed under chapter 18.71 RCW.

(6) "Treatment program" means a plan of care and rehabilitation services provided by those organizations or persons authorized to provide such services to be approved by the board for impaired physicians taking part in the impaired physician program created by RCW 18.72.306.

Sec. 2. Section 2, chapter 416, Laws of 1987 and RCW 18.72.306 are each amended to read as follows:

(1) The board shall enter into a contract with the committee to implement an impaired physician program. The impaired physician program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired physicians to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the board;

(f) Providing post-treatment monitoring and support of rehabilitative impaired physicians; ~~((and))~~

(g) Performing such other activities as agreed upon by the board and the committee; 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 up to ~~((fifteen))~~ twenty-five dollars on each license renewal or issuance of a new license to be collected by the department of licensing from every physician and surgeon licensed under chapter 18.71 RCW in addition to other license fees and the medical discipline assessment fee established under RCW 18.72.380. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired physician program.

NEW SECTION. Sec. 3. The sum of two hundred and seventy thousand dollars, or as much thereof as may be necessary, is appropriated from the health professions account to the department of licensing for the biennium ending June 30, 1991 to carry out the purposes of this act.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 120

[Substitute Senate Bill No. 5362]

ANTIPSYCHOTIC MEDICATIONS—ADMINISTRATION

AN ACT Relating to administration of antipsychotic medications; amending RCW 71.05.010, 71.05.020, 71.05.120, 71.05.130, 71.05.200, 71.05.210, 71.05.250, and 71.05.370; adding a new section to chapter 71.34 RCW; and declaring an emergency.

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

Sec. 1. Section 6, chapter 142, Laws of 1973 1st ex. sess. and RCW 71.05.010 are each amended to read as follows:

The provisions of this chapter are intended by the legislature:

(1) To end inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and short term treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community;

(7) To protect the public safety.

Sec. 2. Section 7, chapter 142, Laws of 1973 1st ex. sess. as amended by section 5, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.020 are each amended to read as follows:

For the purposes of this chapter:

(1) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(3) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others;

(4) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(5) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(6) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(7) "Private agency" means any person, partnership, corporation, or association not defined as a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for the care and treatment of persons who are mentally ill;

(8) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(9) "Department" means the department of social and health services of the state of Washington;

(10) "Secretary" means the secretary of the department of social and health services, or his designee;

(11) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(12) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(13) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association;

(14) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(15) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent under rules and regulations adopted by the secretary;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: PROVIDED, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: PROVIDED FURTHER, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not

require certification: AND PROVIDED FURTHER, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Antipsychotic medications," also referred to as "neuroleptics," means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders and currently includes phenothiazines, thioxanthenes, butyrophenone, dihydroindolone, and dibenzoxazine.

Sec. 3. Section 17, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 301, chapter 212, Laws of 1987 and RCW 71.05.120 are each amended to read as follows:

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, release, administer antipsychotic medications on an emergency basis, or detain a person for evaluation and treatment: **PROVIDED**, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

Sec. 4. Section 18, chapter 142, Laws of 1973 1st ex. sess. as amended by section 8, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.130 are each amended to read as follows:

In any judicial proceeding for involuntary commitment or detention, or administration of antipsychotic medication, or in any proceeding challenging such commitment or detention, or administration of antipsychotic medication, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention or administration of antipsychotic medication and shall defend all challenges to such commitment or detention or administration of antipsychotic medication: **PROVIDED**, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state

hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention and administration of antipsychotic medication.

Sec. 5. Section 25, chapter 142, Laws of 1973 1st ex. sess. as amended by section 13, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.200 are each amended to read as follows:

(1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both ~~((he))~~ the person and, if possible, a responsible member of his or her immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where ~~((he))~~ the person is detained that unless ~~((he))~~ the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain ~~((him))~~ the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that ~~((he))~~ the person is a mentally ill person whose mental disorder presents a likelihood of serious harm to others or himself or herself or that ~~((he))~~ the person is gravely disabled;

(b) That ~~((he))~~ the person has a right to communicate immediately with an attorney; ~~((he))~~ has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and ~~((he))~~ has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That ~~((he))~~ the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That ~~((he))~~ the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That ~~((he))~~ the person has the right to refuse medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith

commence service of a copy of the petition for initial detention on said designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court.

Sec. 6. Section 26, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 439, Laws of 1987 and RCW 71.05.210 are each amended to read as follows:

Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his or her admission, be examined and evaluated by a licensed physician who may be assisted by a physician's assistant according to chapter 18.71A RCW or a nurse practitioner according to chapter 18.88 RCW and a mental health professional as defined in this chapter, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a court proceeding, the individual may refuse all but emergency life-saving treatment, and the individual shall be informed at an appropriate time of his or her right to such refusal of treatment. Such person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm to himself or herself or others, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in an alcohol treatment facility, then the person shall be referred to an approved treatment facility defined under RCW 70.96A.020.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated county mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 7. Section 30, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 6, chapter 439, Laws of 1987 and RCW 71.05.250 are each amended to read as follows:

At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (1) To present evidence on his or her behalf;
- (2) To cross-examine witnesses who testify against him or her;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

Sec. 8. Section 42, chapter 142, Laws of 1973 1st ex. sess. as amended by section 26, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.370 are each amended to read as follows:

Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the performance of shock treatment, the administration of antipsychotic medications, or surgery, except emergency life-saving surgery, ((upon him;)) and not to have shock treatment, antipsychotic medications, or nonemergency surgery in such circumstance unless ordered by a court of competent jurisdiction pursuant to ((a judicial hearing in which the person is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by such person or his counsel to testify on behalf of such person)) the following standards and procedures:

(a) Shock treatment and the administration of antipsychotic medication shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to shock treatment or the administration of antipsychotic medications, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer shock treatment or antipsychotic medications filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for shock treatment is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, any succeeding order entered pursuant to RCW 71.05.320(1), and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication. Upon a request timely filed, a review of any such medication order shall be conducted by the court

at the hearing on a petition filed pursuant to RCW 71.05.300. If a succeeding involuntary treatment order is entered pursuant to RCW 71.05.320(2), a person who refuses to consent to the administration of antipsychotic medications shall be entitled to an evidentiary hearing in accordance with this section.

(e) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order under the following circumstances:

(i) A person presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances.

NEW SECTION. Sec. 9. A new section is added to chapter 71.34 RCW to read as follows:

For the purposes of administration of antipsychotic medication and shock treatment, the provisions of this act apply to minors pursuant to chapter 71.34 RCW.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1989.

Passed the House April 5, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 121

[Substitute House Bill No. 1067]

HEALTH INSURANCE COVERAGE ACCESS ACT—TECHNICAL AMENDMENTS

AN ACT Relating to technical changes in the state Health Insurance Coverage Access Act; and amending RCW 48.41.030, 48.41.040, 48.41.060, 48.41.070, 48.41.080, 48.41.090, 48.41.100, 48.41.120, 48.41.150, and 48.41.190.

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

Sec. 1. Section 3, chapter 431, Laws of 1987 and RCW 48.41.030 are each amended to read as follows:

As used in this chapter, the following terms have the meaning indicated, unless the context requires otherwise:

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

~~((2))~~ (3) "Board" means the board of directors of the pool.

~~((3))~~ (4) "Commissioner" means the insurance commissioner.

~~((4))~~ (5) "Health care facility" has the same meaning as in RCW 70.38.025.

~~((5))~~ (6) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

~~((6))~~ (7) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

~~((7))~~ (8) "Health insurance" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, civilian health and medical program for the uniform services (CHAMPUS), 10 U.S.C. 55, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

~~((9))~~ (9) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health insurance" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health insurance" in subsection ~~((7))~~ (8) of this section.

~~((9))~~ (10) "Insured" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

~~((10))~~ (11) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

~~((11))~~ (12) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

~~((12))~~ (13) "Member" means any commercial insurer which provides disability insurance, any health care service contractor, and any health maintenance organization licensed under Title 48 RCW. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health insurance" set forth in subsection (8) of this section.

~~((13))~~ (14) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

~~((14))~~ (15) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

~~((15))~~ (16) "Substantially equivalent health plan" means a "health plan" as defined in subsection ~~((9))~~ (9) of this section which, in the judgment of the board or the administrator, offers persons including dependents or spouses covered or making application to be covered by this pool an overall level of benefits deemed approximately equivalent to the minimum benefits available under this pool.

Sec. 2. Section 4, chapter 431, Laws of 1987 and RCW 48.41.040 are each amended to read as follows:

(1) There is hereby created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers (~~as designated by federal law~~) shall also be members of the pool.

(2) Pursuant to chapter (~~(34.04)~~) 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of nine members. The commissioner shall select three members of the board who shall represent (a) the general public, (b) health care providers, and (c) health insurance agents. The remaining members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. When self-insured organizations become eligible for participation in the pool, the membership of the board shall be increased to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter (~~(34.04)~~) 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters (~~(34.04)~~) 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner.

Sec. 3. Section 6, chapter 431, Laws of 1987 and RCW 48.41.060 are each amended to read as follows:

The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact the kinds of insurance defined under this title. In addition thereto, the board may:

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

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

(3) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices;

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

(5) Issue policies of insurance in accordance with the requirements of this chapter;

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

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

Sec. 4. Section 7, chapter 431, Laws of 1987 and RCW 48.41.070 are each amended to read as follows:

The pool shall be subject to examination by the commissioner as provided under chapter 48.03 RCW. The board of directors shall submit to the commissioner, not later than ~~((March 1st))~~ one hundred twenty days after the end of each accounting year, a financial report for the ~~((preceding calendar))~~ year in a form approved by the commissioner. The board of directors shall further report to the appropriate standing committees of each house of the legislature by March 1st of each year.

Sec. 5. Section 8, chapter 431, Laws of 1987 and RCW 48.41.080 are each amended to read as follows:

The board shall select an administrator from the membership of the pool whether domiciled in this state or another state through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle accident and health insurance;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least ~~((one year))~~ six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least ~~((six))~~ three months prior to the end of the current three-year period.

(3)~~((a))~~ The administrator shall perform such duties as may be assigned by the board including:

(a) All eligibility and administrative claim payment functions relating to the pool;

~~((The administrator shall))~~ Establishing a premium billing procedure for collection of premiums from insured persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

~~((The administrator shall))~~ Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made; and

(ii) Evaluating the eligibility of each claim for payment by the pool;

~~((The administrator shall submit))~~ Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each ~~((calendar))~~ accounting year, ~~((the administrator shall determine))~~ determination of net ~~((written))~~ paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner(;);

~~((f))~~ (4) The administrator shall be paid as provided in the ~~((plan of operation))~~ contract between the board and the administrator for its expenses incurred in the performance of its services.

Sec. 6. Section 9, chapter 431, Laws of 1987 and RCW 48.41.090 are each amended to read as follows:

(1) Following the close of each ~~((calendar))~~ accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction, the numerator of which equals that member's total number of resident insured persons, including spouse and dependents under the member's health plan in the state during the preceding calendar year, and the denominator of which equals the total number of resident insured persons including spouses and dependents insured under all health plans in the state by pool members.

(b) Any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency ~~((for four years))~~.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

Sec. 7. Section 10, chapter 431, Laws of 1987 and RCW 48.41.100 are each amended to read as follows:

(1) Any individual person who is a resident of this state is eligible for coverage upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on health insurance, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk,

by at least one member within six months of the date of application. Evidence of rejection may be waived in accordance with rules adopted by the board.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person who is at the time of pool application eligible for medical assistance;

(b) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums;

(c) Any person on whose behalf the pool has paid out five hundred thousand dollars in benefits;

(d) Inmates of public institutions and persons whose benefits are duplicated under public programs.

(3) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan.

Sec. 8. Section 12, chapter 431, Laws of 1987 and RCW 48.41.120 are each amended to read as follows:

(1) Subject to the limitation provided in subsection (3) of this section, a pool policy offered in accordance with this chapter shall impose a deductible. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance shall not exceed in a ~~((policy))~~ calendar year:

(a) One thousand five hundred dollars per individual, or three thousand dollars per family, per ~~((policy))~~ calendar year for the five hundred dollar deductible policy;

(b) Two thousand five hundred dollars per individual, or five thousand dollars per family per ~~((policy))~~ calendar year for the one thousand dollar deductible policy; or

(c) An amount authorized by the board for any other deductible policy.

(4) Eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year.

Sec. 9. Section 15, chapter 431, Laws of 1987 and RCW 48.41.150 are each amended to read as follows:

(1) The board shall offer a medical supplement policy for persons receiving medicare (~~((benefits))~~) parts A and B. The supplement policy shall provide (~~((coverage))~~) benefits of one hundred percent of the deductible and copayment required under medicare and eighty percent of the charges for covered services under this chapter that are not paid by medicare. The coverage shall include a limitation of one thousand dollars per person on total annual out-of-pocket expenses for the covered services.

(2) If federal law is adopted that addresses this subject, the board shall offer a policy that is consistent with that federal law.

Sec. 10. Section 19, chapter 431, Laws of 1987 and RCW 48.41.190 are each amended to read as follows:

Neither the participation by members, the establishment of rates, forms, or procedures for coverages issued by the pool, nor any other joint or collective action required by this chapter or the state of Washington shall be the basis of any legal action, civil or criminal liability or penalty against the pool, any member of the board of directors, or members of ~~((it))~~ the pool either jointly or separately.

Passed the House March 2, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 122

[Senate Bill No. 5824]

HEALTH CARE SERVICES—PAYMENTS—JOINTLY ISSUED CHECKS— PROVIDER TO BE FIRST PAYEE

AN ACT Relating to payments by health care service contractors; and amending RCW 48.44.026.

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

Sec. 1. Section 1, chapter 168, Laws of 1982 as amended by section 1, chapter 283, Laws of 1984 and RCW 48.44.026 are each amended to read as follows:

Checks in payment for claims pursuant to any health care service contract for health care services provided by persons licensed or regulated under chapters 18.22, 18.25, 18.29, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.88 RCW, where the provider is not a participant under a contract with the health care service contractor, shall be made out to both the provider and the insured with the provider as the first named payee, jointly, to require endorsement by each: PROVIDED, That payment shall be made in the single name of the insured if the insured as part of his or her

claim furnishes evidence of prepayment to the health care service provider: AND PROVIDED FURTHER, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider.

Passed the Senate March 9, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 123

[Substitute Senate Bill No. 5886]

SEXUALLY TRANSMITTED DISEASES—EXCHANGE OF CONFIDENTIAL MEDICAL INFORMATION

AN ACT Relating to the exchange among health care providers of confidential medical information regarding sexually transmitted diseases and permitting the exchange of such information among persons responsible for making case management, case planning, or foster care decisions regarding a child fourteen years old or younger; and amending RCW 70.24.105.

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

Sec. 1. Section 904, chapter 206, Laws of 1988 and RCW 70.24.105 are each amended to read as follows:

(1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom ~~((a test for a sexually transmitted disease is performed, or the results of such a test or any information relating to diagnosis of or treatment for a sexually transmitted disease in a manner which permits identification of the subject of the test, diagnosis, or treatment except to the following persons))~~ an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV (or confirmed diagnosis of or treatment for any other sexually transmitted disease) executed by the subject ~~((of the test))~~ or the

subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(h) A law enforcement officer, fire fighter, health care provider, health care facility staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test; ((and))

(i) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(j) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender shall be made available by department of corrections health care providers to a department of corrections superintendent or administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of correction's jurisdiction.

(b) The sexually transmitted disease status of a person detained in a jail shall be made available by the local public health officer to a jail administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities.

(c) Information regarding a department of corrections offender's sexually transmitted disease status is confidential and may be disclosed by a correctional superintendent or administrator or local jail administrator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to any other penalties as may be prescribed by law.

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 124

[Senate Bill No. 5040]

DRUG OFFENSES WITHIN CORRECTIONAL INSTITUTIONS AND JAILS— SENTENCE ENHANCEMENT

AN ACT Relating to controlled substances within correctional facilities; and amending RCW 9.94A.310 and 9.94A.370.

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

Sec. 1. Section 2, chapter 115, Laws of 1983 as last amended by section 1, chapter 218, Laws of 1988 and RCW 9.94A.310 are each amended to read as follows:

(1) **TABLE 1**
Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XI	6y 62- 82	6y9m 69- 92	7y6m 77- 102	8y3m 85- 113	9y 93- 123	9y9m 100- 133	12y6m 129- 171	13y6m 139- 185	15y6m 159- 212	17y6m 180- 240
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90 Days	2-	3-	4-	12+-	14-	17-	22-	33-	43-
		6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60 Days	0-90 Days	2-	2-	3-	4-	12+-	14-	17-	22-
			5	6	8	12	14	18	22	29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence 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 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon 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 times shall be added to the presumptive range determined under subsection (2) of this section:

- (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56-.200), or Kidnapping 1 (RCW 9A.40.020)

- (b) 18 months for Burglary 1 (RCW 9A.52.020)
- (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter 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 as that term is defined in this chapter, 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 times shall be added to the presumptive sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i);

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

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.

Sec. 2. Section 8, chapter 115, Laws of 1983 as last amended by section 1, chapter 131, Laws of 1987 and RCW 9.94A.370 are each amended to read as follows:

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may

not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (c), (d), and (e).

Passed the Senate March 3, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 125

[Substitute Senate Bill No. 5614]

HEALTH PROFESSIONS—VOLUNTARY SUBSTANCE ABUSE MONITORING PROGRAMS

AN ACT Relating to implementation of voluntary substance abuse monitoring programs for the regulated health professions; adding a new section to chapter 18.32 RCW; adding a new section to chapter 18.92 RCW; adding a new section to chapter 18.130 RCW; making an appropriation; 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 18.32 RCW to read as follows:

(1) To implement an impaired dentist program as authorized by RCW 18.130.175, the dental disciplinary board shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired dentists to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifteen dollars on each license issuance or renewal to be collected by the department of licensing from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired dentist program.

NEW SECTION. Sec. 2. A new section is added to chapter 18.92 RCW to read as follows:

(1) To implement an impaired veterinarian program as authorized by RCW 18.130.175, the veterinary board of governors shall enter into a contract with a voluntary substance abuse monitoring program. The impaired veterinarian program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired veterinarians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired veterinarians including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired veterinarians; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license issuance or renewal of a new license to be collected by the department of licensing from every veterinarian licensed under chapter 18.92 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired veterinarian program.

NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW to read as follows:

(1) To implement a substance abuse monitoring program for license holders specified under RCW 18.130.040, who are impaired by substance abuse, the disciplinary authority may enter into a contract with a voluntary substance abuse program under RCW 18.130.175. The program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired license holders to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired license holders including those ordered by the disciplinary authority;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired license holders; and
- (g) Performing other activities as agreed upon by the disciplinary authority.

(2) A contract entered into under subsection (1) of this section may be financed by a surcharge on each license issuance or renewal to be collected by the department of licensing from the license holders of the same regulated health profession. These moneys shall be placed in the health professions account to be used solely for the implementation of the program.

NEW SECTION. Sec. 4. The sum of three hundred ten thousand five hundred sixty dollars, or as much thereof as may be necessary, is appropriated from the health professions account to the department of licensing for the biennium ending June 30, 1991, to carry out the purposes of this act.

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

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 126

[Second Substitute Senate Bill No. 5660]

CHILD CARE RESOURCE AND REFERRAL PROGRAM GRANTS

AN ACT Relating to child care resource and referral; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature recognizes that child care has been a patchwork of services without an integrating system to ensure that planning, coordination, and linkages between consumers and child care providers occur. The legislature finds that the creation of the office of the child care coordinator was the first step to achieving an integrated system. Additional steps must be taken to assist parents in obtaining appropriate child care for their children.

NEW SECTION. Sec. 2. Potential or existing resource and referral programs will, as part of the grant application process, develop a plan for achieving the following objectives:

- (1) Provide parents with information about child care resources, including location of services and subsidies;
- (2) Carry out child care provider recruitment and training programs;
- (3) Offer support services, such as parent and provider seminars, toy lending libraries, and substitute banks;
- (4) Provide information for businesses regarding child care supply and demand;
- (5) Advocate for increased public and private sector resources; and
- (6) Provide technical assistance to employers regarding employee child care services.

NEW SECTION. Sec. 3. The coordinator shall establish a method by which interested persons or agencies can apply for a grant. Such method shall include the requirements listed in section 2 of this act. In no instance

shall a grant of larger than twenty-five thousand dollars be made to either an existing or potential resource and referral program.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 13, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 127

[Senate Bill No. 5464]

BOXING AND WRESTLING PROMOTERS

AN ACT Relating to professional wrestling and boxing; amending RCW 67.08.001, 67.08.030, 67.08.050, 67.08.080, 67.08.090, 67.08.100, 67.08.110, 67.08.120, 67.08.010, 67.08.015, 67.08.055, 67.08.060, and 67.08.140; adding new sections to chapter 67.08 RCW; prescribing penalties; and declaring an emergency.

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) "Boxing" includes, but is not limited to, sumo, judo, and karate in addition to fisticuffs, but does not include professional wrestling.

(2) "Commission" means the professional athletic commission.

(3) "Promoter" means any person and, in the case of a corporation, an officer, director, employee, or shareholder thereof, who produces, arranges, or stages any professional wrestling exhibition or boxing contest.

(4) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

NEW SECTION. Sec. 2. A promoter shall have an ambulance or paramedical unit present at the arena in case a serious injury occurs unless an ambulance or paramedical unit is located within five miles of the arena and that unit is on call for such an occurrence.

NEW SECTION. Sec. 3. A promoter shall ensure that adequate security personnel are in attendance at a wrestling exhibition or boxing contest to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the commission.

NEW SECTION. Sec. 4. (1) It is unlawful for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket

stub, whether sold or unsold, within three months after the date of any exhibition or show.

(2) It is unlawful for any wrestler to deliberately cut himself or herself or otherwise mutilate himself or herself while participating in a wrestling exhibition.

(3) Any licensee convicted under chapter 69.50 RCW shall have his or her license revoked.

(4) The striking of any person that is not a licensed participant at a wrestling exhibition or show shall constitute grounds for suspension, revocation, or both.

Sec. 5. Section 1, chapter 184, Laws of 1933 as last amended by section 1, chapter 19, Laws of 1988 and RCW 67.08.001 are each amended to read as follows:

~~((1) For the purposes of this chapter, "boxing" includes, but is not limited to, wrestling, sumo, judo, and karate in addition to fisticuffs.~~

~~((2)) There is hereby created and established a state commission to be known and designated as the "state ((boxing)) professional athletic commission" and in this chapter referred to as the commission. The commission shall be composed of three members who shall be appointed by the governor and shall be subject to removal at the pleasure of the governor. The members of the first commission to be appointed after June 7, 1933, shall be appointed for the terms beginning July 1, 1933, and expiring as follows: One commissioner for the term expiring January 31, 1934, one commissioner for the term expiring January 31, 1935, and one commissioner for the term expiring January 31, 1936. Each of the first commissioners appointed shall hold office until his successor is appointed and qualified. Upon the expiration of the terms of the three commissioners first appointed, each succeeding commissioner shall be appointed to hold office for a term of four years and until his successor shall have been appointed and qualified. In case of a vacancy, it shall be filled by the appointment by the governor for the unexpired portion of the term in which such vacancy occurs.~~

Sec. 6. Section 9, chapter 184, Laws of 1933 and RCW 67.08.030 are each amended to read as follows:

~~(1) Every ((licensee)) boxing promoter, as a condition for receiving a license ((as herein provided for)), shall file a good and sufficient bond in the sum of ((one)) ten thousand dollars with the commission ((in cities of less than one hundred fifty thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants condition [conditioned] for)), conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the ((obeyance {observance})) observance of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general.~~

(2) Every promoter of a wrestling exhibition or closed circuit telecast as a condition of receiving a license as provided for under this chapter shall file a good and sufficient bond in the sum of one thousand dollars with the commission in cities of less than one hundred fifty thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes and officials provided for herein and the observance of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general.

(3) Boxing promoters must obtain medical insurance to cover any injuries incurred by participants at the time of the event.

Sec. 7. Section 11, chapter 184, Laws of 1933 and RCW 67.08.050 are each amended to read as follows:

(1) Any ((licensee)) promoter as herein provided shall within ((three)) seven days prior to the holding of any boxing contest or sparring ((and/or wrestling)) match or exhibition file with the commission a statement setting forth the name of each ((contestant)) licensee, his or her manager or managers and such other information as the commission may require((, and shall, within seventy-two hours after)). Any promoter shall, within seven days before holding any wrestling exhibition or show, file with the commission a statement setting forth the name of each contestant, his or her manager or managers, and such other information as the commission may require. Participant changes within a twenty-four hour period regarding a wrestling exhibition or show may be allowed after notice to the commission, if the new participant holds a valid license under this chapter. The commission may stop any event that is a part of a wrestling exhibition wherein any participant is not licensed under this chapter. Upon the termination of any contest or exhibition the promoter shall file with the designated commission representative a written report, duly verified as the commission may require showing the number of tickets sold for such contest, the price charged for such tickets and the gross proceeds thereof, and such other and further information as the commission may require. ((Such licensee)) The promoter shall pay to the commission at the time of filing the above report a tax equal to five percent of such gross receipts and said five percent of such gross receipts shall be immediately paid by the commission into the state ((athletic)) general fund ((of the state of Washington which is hereby created)).

(2) The number of complimentary tickets shall be limited to two percent of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation.

Sec. 8. Section 14, chapter 184, Laws of 1933 as last amended by section 1, chapter 45, Laws of 1974 ex. sess. and RCW 67.08.080 are each amended to read as follows:

No boxing contest or sparring exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten rounds and no one round of any such contest or exhibition shall be scheduled for ~~((a longer period))~~ less than or longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state or regional championships the commission may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds, and in bouts involving national championships the commission may grant an extension of no more than five additional rounds to allow total bouts of fifteen rounds. No contestant in any boxing contest or sparring match or exhibition whether under this chapter or otherwise shall be permitted to wear gloves weighing less than ~~((six))~~ eight ounces. ~~((The length and duration for wrestling matches whether held under the provisions of this chapter or otherwise shall be regulated by order of the commission:))~~ The commission shall promulgate rules and regulations to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the contest in all respects, and to otherwise make rules and regulations consistent with this chapter, but such rules and regulations shall apply only to contests held under the provisions of this chapter.

Sec. 9. Section 15, chapter 184, Laws of 1933 and RCW 67.08.090 are each amended to read as follows:

Each contestant for boxing~~((;))~~ or sparring ~~((or wrestling))~~ shall be examined within eight hours prior to the contest by a competent physician appointed by the commission. The physician shall forthwith and before such contest report in writing and over his or her signature the physical condition of each and every contestant to the commissioner or inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest. Blank forms of physicians' report shall be provided by the commission and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee designated by the commission by the ~~((licensee))~~ promoter conducting such match or exhibition. The commission may have a participant in a wrestling exhibition or show examined by a physician appointed by the commission prior to the exhibition or show. A participant in a wrestling exhibition or show whose condition is not approved by the examining physician shall not be permitted to participate in the exhibition or show. No boxing contest ~~((or))~~, sparring ~~((or wrestling))~~ match, or exhibition shall be held unless a licensed physician of the commission or his or her duly appointed representative~~((, shall be))~~ is present throughout the contest. The commission may require that a physician be present at a wrestling exhibition or show. Any physician present at a wrestling show or exhibition shall be paid for by the promoter.

Any practicing physician and surgeon may be selected by the board as the examining physician. Such physician present at such contest shall have authority to stop any contest when in ~~((his))~~ the physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be ~~((his))~~ the physician's duty to stop such contest. ~~((If he has acted as examining physician he shall receive no fee for being present at such contest.))~~

Sec. 10. Section 16, chapter 184, Laws of 1933 as amended by section 6, chapter 305, Laws of 1959 and RCW 67.08.100 are each amended to read as follows:

(1) The commission may grant annual licenses upon application in compliance with the rules and regulations prescribed by the commission, and the payment of the fees, the amount of which is to be determined by the commission, prescribed to promoters, managers, referees, boxers, wrestlers, and seconds ~~((and trainers))~~: PROVIDED, That the provisions of this section shall not apply to contestants or participants in strictly amateur contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the ~~((war))~~ defense department or any bona fide athletic club which is a member of the Pacific northwest association of the amateur athletic union of the United States, holding and promoting athletic contests ~~((or smokers))~~ and where all funds are used primarily for the benefit of their members.

(2) Any such license may be revoked by the commission for any cause which it shall deem sufficient.

(3) No person shall participate or serve in any of the above capacities unless licensed as ~~((herein))~~ provided in this chapter.

(4) The referee for any boxing contest shall be designated by the commission from among such licensed referees.

(5) The referee for any wrestling exhibition or show shall be provided by the promoter and licensed by the commission.

Sec. 11. Section 17, chapter 184, Laws of 1933 and RCW 67.08.110 are each amended to read as follows:

Any person or any member of any group of persons or corporation promoting ~~((wrestling or))~~ boxing exhibitions or contests who shall participate directly or indirectly in the purse or fee of any manager of any boxers ~~((or wrestlers))~~ or any boxer ~~((or any wrestler))~~ and any licensee who shall conduct or participate in any sham or fake boxing contest or sparring ~~((or wrestling))~~ match or exhibition shall thereby forfeit its license and the commission shall declare such ~~((licensee {license})~~) license canceled and void and such licensee shall not thereafter be entitled to receive another such, or any license issued pursuant to the provisions of this chapter.

Sec. 12. Section 18, chapter 184, Laws of 1933 and RCW 67.08.120 are each amended to read as follows:

Any contestant or licensee who shall participate in any sham or fake boxing contest (~~((or sparring or wrestling))~~), match, or exhibition (~~((or))~~) and any licensee or participant who violates any rule or regulation of the commission shall be penalized in the following manner: For the first offense he shall be restrained by order of the commission for a period of not less than three months from participating in any contest held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense; for any second offense such contestant shall be forever suspended from participation in any contest held under the provisions of this chapter.

Sec. 13. Section 7, chapter 184, Laws of 1933 as amended by section 2, chapter 48, Laws of 1975-'76 2nd ex. sess. and RCW 67.08.010 are each amended to read as follows:

The commission shall have power to issue and for cause to revoke a license to conduct boxing contests (~~((or))~~), sparring matches, or wrestling (~~((matches))~~) shows or exhibitions including a simultaneous telecast of any live, current or spontaneous boxing, sparring or wrestling match or performance on a closed circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the commission may determine. Such licenses shall entitle the holder thereof to conduct boxing contests and sparring and/or wrestling matches and exhibitions under such terms and conditions and at such times and places as the commission may determine. In case the commission shall refuse to grant a license to any applicant, or shall cancel any license, such applicant, or the holder of such canceled license shall be entitled, upon application, to a hearing to be held not less than sixty days after the filing of such order at such place as the commission may designate: PROVIDED, HOWEVER, That if it has been found by a valid finding and such finding is fully set forth in such order, that the applicant or licensee has been guilty of disobeying any provision of this chapter, such hearing shall be denied.

Sec. 14. Section 2, chapter 9, Laws of 1977 and RCW 67.08.015 are each amended to read as follows:

The commission shall have power and it shall be its duty to direct, supervise, and control all boxing contests (~~((or))~~), sparring matches, and wrestling (~~((matches))~~) shows or exhibitions conducted within the state and no such boxing contest, sparring match, or wrestling (~~((match))~~) show or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission may, in its discretion, issue and for cause revoke a license to conduct, hold or give boxing(~~(;)~~) and sparring (~~((and/or wrestling))~~) contests, (~~((matches;))~~) and wrestling shows and exhibitions where an admission fee is charged by any club, corporation, organization, association, or fraternal society: PROVIDED, HOWEVER, That all boxing contests, sparring or wrestling matches or exhibitions which:

(1) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(2) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes;

shall not be subject to the provisions of this chapter: PROVIDED, FURTHER, That every contestant in any boxing contest(;) or sparring ((~~or wrestling~~)) match not conducted under the provisions of this chapter, prior to engaging in any such contest or match, shall be examined by a practicing physician at least once in each calendar year or, where such contest is conducted by a common school, college or university as further described in this section, once in each academic year in which instance such physician shall also designate the maximum and minimum weights at which such contestant shall be medically certified to participate: PROVIDED FURTHER, That no contestant shall be permitted to participate in any such boxing contest, sparring or wrestling match or exhibition in any weight classification other than that or those for which he is certified: PROVIDED FURTHER, That the organizations exempted by this section from the provisions of this chapter shall be governed by RCW 67.08.080 as said section applies to boxing contests(;) or sparring ((~~or wrestling~~)) matches or exhibitions conducted by organizations exempted by this section from the general provisions of this chapter. No boxing contest ((~~or~~)), sparring match, or wrestling ((~~match~~)) show or exhibition shall be conducted within the state except pursuant to a license issued in accordance with the provisions of this chapter and the rules and regulations of the commission except as hereinabove provided.

Sec. 15. Section 5, chapter 48, Laws of 1975-'76 2nd ex. sess. and RCW 67.08.055 are each amended to read as follows:

Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or ((~~performance~~)) show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the commission a verified written report on a form which is supplied by the commission showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the commission a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the commission into the general fund of the state.

Sec. 16. Section 12, chapter 184, Laws of 1933 as last amended by section 2, chapter 19, Laws of 1988 and RCW 67.08.060 are each amended to read as follows:

The commission may appoint official inspectors at least one of which, in the absence of a member of the commission, shall be present at any boxing contest or sparring ~~((and/or wrestling))~~ match or exhibition held under the provisions of this chapter and may be present at any wrestling exhibition or show. Such inspectors shall carry a card signed by the chairman of the commission evidencing their authority. It shall be their duty to see that all rules and regulations of the commission and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest, and such inspector is authorized to receive from the licensee conducting the contest the statement of receipts herein provided for and to immediately transmit such reports to the commission. Each inspector shall receive a fee from the licensee to be set by the commission for each contest officially attended. Each inspector shall also receive from the state travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

Sec. 17. Section 22, chapter 184, Laws of 1933 as last amended by section 3, chapter 19, Laws of 1988 and RCW 67.08.140 are each amended to read as follows:

Any person, club, corporation, organization, association, ~~((or))~~ fraternal society, participant, or promoter conducting ~~((within this state))~~ or participating in boxing contests, sparring matches, or wrestling ((contests)) shows or exhibitions within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting such contests excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the commission, or any citizen of any county where any person, club, corporation, organization, association, ~~((or))~~ fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic contests or exhibitions in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, ~~((or))~~ fraternal society, promoter, or participant from holding or participating in such contest or exhibition.

NEW SECTION. Sec. 18. Sections 1 through 4 of this act are each added to chapter 67.08 RCW.

NEW SECTION. Sec. 19. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 128

[Senate Bill No. 5150]

FORMER PRISONER OF WAR RECOGNITION DAY

AN ACT Relating to a former prisoner of war recognition day; and amending RCW 1.16.050.

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

Sec. 1. Section 1, chapter 51, Laws of 1927 as last amended by section 1, chapter 189, Laws of 1985 and RCW 1.16.050 are each amended to read as follows:

The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall

be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

Passed the Senate February 15, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 129

[Substitute Senate Bill No. 5644]
MILWAUKEE ROAD TRANSFER

AN ACT Relating to the Milwaukee Road; amending RCW 43.51.405, 43.51.409, and 79.08.275; and creating a new section.

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

Sec. 1. Section 2, chapter 174, Laws of 1984 and RCW 43.51.405 are each amended to read as follows:

Management control of the portion of the Milwaukee Road corridor, beginning at the western terminus near Easton and concluding at the ~~((western))~~ west end of the ~~((tunnel))~~ bridge structure over the Columbia river, which point is located in ~~((the southeast corner of))~~ section ~~((20))~~ 34, township ~~((19))~~ 16 north, range ~~((17))~~ 23 east, W.M., ~~((approximately twenty-five miles east of the western terminus))~~ inclusive of the northerly spur line therefrom, shall be transferred by the department of natural resources to the state parks and recreation commission at no cost to the commission.

Sec. 2. Section 6, chapter 174, Laws of 1984 and RCW 79.08.275 are each amended to read as follows:

The portion of the Milwaukee Road corridor from the ~~((western))~~ west end of the ~~((tunnel))~~ bridge structure over the Columbia river, which point is located in ~~((the southeast corner of))~~ section ~~((20))~~ 34, township ~~((19))~~ 16 north, range ~~((17))~~ 23 east, W.M.~~((; approximately twenty-five miles east of the western terminus))~~, to the Idaho border purchased by the state shall be under the management and control of the department of natural resources.

Sec. 3. Section 4, chapter 174, Laws of 1984 and RCW 43.51.409 are each amended to read as follows:

The state parks and recreation commission may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if such a sale or exchange will not adversely affect the recreational potential of the corridor; and

(6) Manage the portion of the Milwaukee Road corridor lying between the eastern corporate limits of the city of Kittitas and the eastern end of the corridor under commission control for recreational access limited to holders of permits issued by the commission. The commission shall, for the purpose of issuing permits for corridor use, adopt rules necessary for the orderly and safe use of the corridor and the protection of adjoining landowners, which may include restrictions on the total numbers of permits issued, numbers in a permitted group, and periods during which the corridor is available for permitted users. The commission may increase recreational management of this portion of the corridor and eliminate the permit system as it determines in its discretion based upon available funding and other resources.

NEW SECTION. Sec. 4. Nothing in this act shall be construed to affect any existing or reversionary interests in the real property lying within the Milwaukee Road corridor.

Passed the Senate March 10, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 130

[House Bill No. 1027]

DEPARTMENT OF FISHERIES—DIRECTOR—AUTHORITY

AN ACT Relating to administration of the fisheries code; and amending RCW 75.08.070 and 75.40.060.

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

Sec. 1. Section 75.08.070, chapter 12, Laws of 1955 as amended by section 14, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.08.070 are each amended to read as follows:

Consistent with federal law, the director's authority extends to all areas and waters within the territorial boundaries of the state, to the offshore waters, and to the concurrent waters of the Columbia river.

Consistent with federal law, the director's authority extends to fishing in offshore waters by residents of this state.

The director may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The director may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, ~~((or international))~~ the Pacific salmon ((fisheries)) commission as provided in chapter 75.40 RCW, or the international Pacific halibut commission.

Sec. 2. Section 75.40.060, chapter 12, Laws of 1955 as amended by section 153, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.40.060 are each amended to read as follows:

The director may adopt and enforce the provisions of the ~~((convention))~~ treaty between the government of the United States and the government of Canada ((for the protection, preservation and extension of the sockeye salmon fishery of the Fraser River system, signed at Washington, District of Columbia, on May 26, 1930, as amended by the protocol signed at Ottawa, December 28, 1956, and the protocol signed at Washington, February 24, 1977)) concerning Pacific salmon, treaty document number 99-2, entered into force March 18, 1985, at Quebec City, Canada, and the regulations of the commission adopted under authority of the ((convention)) treaty.

Passed the House February 3, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 131

[Substitute Senate Bill No. 5488]

LIVESTOCK THEFT—MANDATORY FINE

AN ACT Relating to theft of livestock; adding a new section to chapter 9A.56 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9A.56 RCW to read as follows:

(1) Whenever a person is convicted of a violation of RCW 9A.56.080, the convicting court shall order the person to pay the amount of two thousand dollars for each animal killed or possessed.

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(3) If two or more persons are convicted of any violation of this section, the amount required under this section shall be imposed upon them jointly and severally.

(4) The fine in this section shall be imposed in addition to and regardless of any penalty, including fines or costs, that is provided for any violation of this section. The amount imposed by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted payment or any installment payment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(6) The two thousand dollars additional penalty shall be remitted by the county treasurer to the state treasurer as provided under RCW 10.82.070.

Passed the Senate March 13, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 132

[Senate Bill No. 5231]

ANTIQUÉ FIREARMS—DEFINED

AN ACT Relating to antique firearms; and amending RCW 9.41.150.

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

Sec. 1. Section 15, chapter 172, Laws of 1935 as amended by section 11, chapter 124, Laws of 1961 and RCW 9.41.150 are each amended to read as follows:

RCW 9.41.010 through 9.41.160 shall not apply to antique (~~((pistols and revolvers manufactured prior to 1898 and held as collector's items))~~) firearms. "Antique firearm," as used in this section, means a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Passed the Senate March 15, 1989.

Passed the House April 10, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 133

[Substitute Senate Bill No. 5252]

PREMISES UNFIT FOR HUMAN HABITATION—ABATEMENT

AN ACT Relating to unfit buildings, dwellings, structures, and premises; and amending RCW 35.80.010, 35.80.020, and 35.80.030.

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

Sec. 1. Section 35.80.010, chapter 7, Laws of 1965 as last amended by section 1, chapter 127, Laws of 1969 ex. sess. and RCW 35.80.010 are each amended to read as follows:

It is hereby found that there exist, in the various municipalities and counties of the state, dwellings which are unfit for human habitation, and buildings ~~((and))~~, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are inimical

to the health and welfare of the residents of such municipalities and counties.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended, and that the necessity of the public interest for the enactment of this law is hereby declared to be a matter of local legislative determination.

Sec. 2. Section 35.80.020, chapter 7, Laws of 1965 as last amended by section 2, chapter 127, Laws of 1969 ex. sess. and RCW 35.80.020 are each amended to read as follows:

The following terms, however used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Board" shall mean the improvement board as provided for in RCW 35.80.030(1)(a);

(2) "Local governing body" shall mean the council, board, commission, or other legislative body charged with governing the municipality or county;

(3) "Municipality" shall mean any city, town or county in the state;

(4) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality or county relating to health, fire, building regulation, or other activities concerning dwellings, buildings, ~~((and))~~ structures, or premises in the municipality or county.

Sec. 3. Section 35.80.030, chapter 7, Laws of 1965 as last amended by section 1, chapter 213, Laws of 1984 and RCW 35.80.030 are each amended to read as follows:

(1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, said governing body may adopt ordinances relating to such dwellings, buildings, ~~((or))~~ structures, or premises. Such ordinances may provide for the following:

(a) That an "improvement board" or officer be designated or appointed to exercise the powers assigned to such board or officer by the ordinance as specified herein. Said board or officer may be an existing municipal board or officer in the municipality, or may be a separate board or officer appointed solely for the purpose of exercising the powers assigned by said ordinance.

If a board is created, the ordinance shall specify the terms, method of appointment, and type of membership of said board, which may be limited, if the local governing body chooses, to public officers as herein defined.

(b) If a board is created, a public officer, other than a member of the improvement board, may be designated to work with the board and carry out the duties and exercise the powers assigned to said public officer by the ordinance.

(c) That if, after a preliminary investigation of any dwelling, building, ~~((or))~~ structure, or premises, the board or officer finds that it is unfit for

human habitation or other use, he shall cause to be served either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the auditor's office of the county in which such property is located, and shall post in a conspicuous place on such property, a complaint stating in what respects such dwelling, building, ~~((or))~~ structure, or premises is unfit for human habitation or other use. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the board or officer in the exercise of reasonable diligence, and the board or officer ~~((shall))~~ makes an affidavit to ~~((the))~~ that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the ~~((notice))~~ complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address ~~((appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor. A copy of the notice and order shall also be mailed, addressed to such person, at the address))~~ of the building involved in the proceedings, ~~((if different, and to each person or party having a recorded right, title, estate, lien, or interest in the property))~~ and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located. Such complaint shall contain a notice that a hearing will be held before the board or officer, at a place therein fixed, not less than ten days nor more than thirty days after the serving of said complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board or officer. A copy of such complaint shall also be filed with the auditor of the county in which the dwelling, building, ~~((or))~~ structure, or premise is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

(d) That the board or officer may determine that a dwelling, building, ~~((or))~~ structure, or premises is unfit for human habitation or other use if it finds that conditions exist in such dwelling, building, ~~((or))~~ structure, or premises which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, ~~((or))~~ structure, or premises, the occupants of neighboring dwellings, or other residents of such municipality. Such conditions may include the following, without limitations: Defects therein increasing the hazards of fire or accident; inadequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structural defects, uncleanliness, overcrowding, or inadequate drainage. The ordinance shall state reasonable and minimum standards covering such conditions, including those contained in ordinances adopted in accordance with subdivision (7)(a)

herein, to guide the board or the public officer and the agents and employees of either, in determining the fitness of a dwelling for human habitation, or building ((σ)), structure, or premises for other use.

(e) That the determination of whether a dwelling, building, ((σ)) structure, or premises should be repaired or demolished, shall be based on specific stated standards on (i) the degree of structural deterioration of the dwelling, building, ((σ)) structure, or premises, or (ii) the relationship that the estimated cost of repair bears to the value of the dwelling, building, ((σ)) structure, or premises, with the method of determining this value to be specified in the ordinance.

(f) That if, after the required hearing, the board or officer determines that the dwelling is unfit for human habitation, or building or structure or premises is unfit for other use, it shall state in writing its findings of fact in support of such determination, and shall issue and cause to be served upon the owner or party in interest thereof, as is provided in subdivision (1)(c), and shall post in a conspicuous place on said property, an order which (i) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, ((σ)), structure, or premises to render it fit for human habitation, or for other use, or to vacate and close the dwelling, building, ((σ)), structure, or premises, if such course of action is deemed proper on the basis of the standards set forth as required in subdivision (1)(e); or (ii) requires the owner or party in interest, within the time specified ((σ)) in the order, to remove or demolish such dwelling, building, ((σ)), structure, or premises, if this course of action is deemed proper on the basis of said standards. If no appeal is filed, a copy of such order shall be filed with the auditor of the county in which the dwelling, building, ((σ)), structure, or premises is located.

(g) The owner or any party in interest, within thirty days from the date of service upon the owner and posting of an order issued by the board under the provisions of subdivision (c) of this subsection, may file an appeal with the appeals commission.

The local governing body of the municipality shall designate or establish a municipal agency to serve as the appeals commission. The local governing body shall also establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the appeals commission, and such rules of procedure shall include the following, without being limited thereto: (i) All matters submitted to the appeals commission must be resolved by the commission within sixty days from the date of filing therewith and (ii) a transcript of the findings of fact of the appeals commission shall be made available to the owner or other party in interest upon demand.

The findings and orders of the appeals commission shall be reported in the same manner and shall bear the same legal consequences as if issued by

the board, and shall be subject to review only in the manner and to the extent provided in subdivision (2) of this section.

If the owner or party in interest, following exhaustion of his rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, ~~((or)), structure, or premises~~, the board or officer may direct or cause such dwelling, building, ~~((or)), structure, or premises~~ to be repaired, altered, improved, vacated, and closed, removed, or demolished.

(h) That the amount of the cost of such repairs, alterations or improvements~~((:));~~; or vacating and closing~~((:));~~; or removal or demolition by the board or officer, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Upon certification to him by the treasurer of the municipality in cases arising out of the city or town or by the county improvement board or officer, in cases arising out of the county, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84-.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the municipality. If the dwelling, building ~~((or)), structure, or premises~~ is removed or demolished by the board or officer, the board or officer shall, if possible, sell the materials of such dwelling, building, ~~((or)), structure, premises~~ in accordance with procedures set forth in said ordinance, and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the board or officer, after deducting the costs incident thereto.

The ~~((demolition))~~ assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

(2) Any person affected by an order issued by the appeals commission pursuant to subdivision (1)(f) hereof may, within thirty days after the posting and service of the order, petition to the superior court for an injunction restraining the public officer or members of the board from carrying out the provisions of the order. In all such proceedings the court is authorized to affirm, reverse, or modify the order and such trial shall be heard de novo.

(3) An ordinance adopted by the local governing body of the municipality may authorize the board or officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section. These powers shall include the following in addition to others herein granted: (a) (i) To determine which dwellings within the municipality are unfit for human habitation; (ii) to determine which buildings ~~((or)), structures, or premises~~ are unfit for other use; (b) to administer

oaths and affirmations, examine witnesses and receive evidence; and (c) to investigate the dwelling and other ~~((use))~~ property conditions in the municipality or county and to enter upon premises for the purpose of making examinations when the board or officer has reasonable ground for believing they are unfit for human habitation, or for other use: PROVIDED, That such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted.

(4) The local governing body of any municipality adopting an ordinance pursuant to this chapter may appropriate the necessary funds to administer such ordinance.

(5) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(6) Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(7) Any municipality may (by ordinance adopted by its governing body) (a) prescribe minimum standards for the use and occupancy of dwellings throughout the municipality, or county, (b) prescribe minimum standards for the use or occupancy of any building ~~((or))~~, structure, or premises used for any other purpose, (c) prevent the use or occupancy of any dwelling, building, ~~((or))~~, structure, or premises, which is injurious to the public health, safety, morals, or welfare, and (d) prescribe punishment for the violation of any provision of such ordinance.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 134

[Senate Bill No 5301]

FACTORY BUILT HOUSING—STANDARDS AND SPECIFICATIONS

AN ACT Relating to codes for factory built housing; and amending RCW 43.22.480.

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

Sec. 1. Section 7, chapter 44, Laws of 1970 ex. sess. as last amended by section 2, chapter 76, Laws of 1979 ex. sess. and RCW 43.22.480 are each amended to read as follows:

The department shall ~~((prescribe))~~ adopt and enforce rules ~~((and regulations which))~~ that protect the health, safety, and property of the people of this state by assuring that all factory built housing or factory built commercial structures are structurally sound and that the plumbing, heating, electrical, and other components thereof are reasonably safe. ~~((Such))~~ The rules ~~((and regulations))~~ shall be reasonably consistent with recognized and accepted principles of safety and structural soundness, and in ~~((promulgating such))~~ adopting the rules ((and regulations)) the department shall consider, so far as practicable, the standards and specifications contained in ~~((: The uniform building code (1976), published by the international conference of building officials; the uniform plumbing code (1976), published by the international association of plumbing and mechanical officials; the uniform mechanical code (1976), published by the international conference of building officials and the international association of plumbing and mechanical officials; and the national electrical code (1975), published by the national fire protection association. Updated issues of these codes and amendments to such codes shall be considered by the department))~~ the uniform building, plumbing, and mechanical codes, including the barrier free code and the Washington energy code as adopted by the state building code council pursuant to chapter 19.27A RCW, and the national electrical code, including the state rules as adopted pursuant to chapter 19.28 RCW and published by the national fire protection association.

The department shall set a schedule of fees which will cover the costs incurred by the department in the administration and enforcement of RCW 43.22.450 through 43.22.490.

Passed the Senate February 22, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 135

[Substitute Senate Bill No. 5151]

SENIOR CITIZEN STATE PARK PASSES

AN ACT Relating to senior citizen state park passes; and amending RCW 43.51.055.

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

Sec. 1. Section 1, chapter 330, Laws of 1977 ex. sess. as last amended by section 909, chapter 176, Laws of 1988 and RCW 43.51.055 are each amended to read as follows:

(1) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen's pass which shall (a)

entitle such person, and members of his camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and (b) entitle such person to free admission to any state park.

(2) The commission shall grant a senior citizen's pass to any person who applies for the same and who meets the following requirements:

(a) The person is at least sixty-two years of age; and

(b) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(c) The person and his or her spouse have a combined income which would qualify the person for a property tax exemption pursuant to RCW 84.36.381, as now law or hereafter amended. The financial eligibility requirements of this subparagraph (c) shall apply regardless of whether the applicant for a senior citizen's pass owns taxable property or has obtained or applied for such property tax exemption.

(3) Each senior citizen's pass granted pursuant to this section (~~shall, unless renewed, expire on January 1 of the next year following the year in which it was issued. Any application for renewal of a senior citizen's pass shall, for purposes of the financial eligibility requirements of this section, be treated as an original application~~) is valid so long as the senior citizen meets the requirements of subsection (2)(b) of this section. Notwithstanding, any senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(4) A holder of a senior citizen's pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in subsection (2)(a), (b), or (c) of this section. The holder shall have the pass returned upon providing proof to the satisfaction of the director of the parks and recreation commission that the holder does meet the eligibility criteria for obtaining the senior citizen's pass.

(5) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for permanent disability under RCW 71A.10.020(2) due to unemployability full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW 46.16.381 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall (a) entitle such person, and members of his camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and (b) entitle such person to free admission to any state park.

~~((5))~~ 6 A card, decal, or special license plate issued for a permanent disability under RCW 46.16.381 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

~~((6))~~ 7 Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall (a) entitle such person, and members of his camping unit, to free use of any campsite within any state park, and (b) entitle such person to free admission to any state park.

~~((7))~~ 8 All passes issued pursuant to this section shall be valid at all parks any time during the year: PROVIDED, That the pass shall not be valid for admission to concessionaire operated facilities.

~~((8))~~ 9 This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

~~((9))~~ 10 The commission shall adopt such rules and regulations as it finds appropriate for the administration of this section. Among other things, such rules and regulations shall prescribe a definition of "camping unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such person, a minimum Washington residency requirement for applicants for a senior citizen's pass and an application form to be completed by applicants for a senior citizen's pass.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 136

[House Bill No. 1032]

GENERAL OBLIGATION BONDS—SALE AUTHORIZED

AN ACT Relating to state general obligation bonds; amending RCW 43.83A.020, 43.83A.070, 43.99E.015, 43.99E.035, 43.99F.020, 43.99F.060, 75.48.020, and 75.48.060; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of this act to allow the sale of state general obligation bonds to underwriters at a discount so that they may be sold to the public at face value, thereby resulting in lower interest costs to the state. Increases in bond authorizations under this act represent this discount and will have no effect on the amount of money available for the projects to be financed by the bonds.

Sec. 2. Section 2, chapter 127, Laws of 1972 ex. sess. as amended by section 1, chapter 242, Laws of 1977 ex. sess. and RCW 43.83A.020 are each amended to read as follows:

For the purpose of providing funds for the planning, acquisition, construction, and improvement of public waste disposal facilities in this state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of two hundred twenty-five million nine hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. As used in this section the phrase "public waste disposal facilities" shall not include the acquisition of equipment used to collect, carry, and transport garbage. These bonds shall be paid and discharged within twenty years of the date of issuance or within thirty years should Article VIII of the Constitution of the state of Washington be amended to permit such longer term. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the net proceeds of such bonds to be sold.

Sec. 3. Section 7, chapter 127, Laws of 1972 ex. sess. and RCW 43-.83A.070 are each amended to read as follows:

The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. ~~((None of the bonds herein authorized shall be sold for less than their par value.))~~

Sec. 4. Section 2, chapter 234, Laws of 1979 ex. sess. and RCW 43-.99E.015 are each amended to read as follows:

For the purpose of providing funds for the planning, acquisition, construction, and improvement of water supply facilities within the state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred ~~((twenty-five))~~ twenty-seven million ten thousand dollars, or so much thereof as may be required, to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the net proceeds of the bonds to be sold.

Sec. 5. Section 6, chapter 234, Laws of 1979 ex. sess. and RCW 43-.99E.035 are each amended to read as follows:

The state finance committee is authorized to prescribe the forms, terms, conditions, and covenants of the bonds; the time or times of sale of all or any portion of them; and the conditions and manner of their sale and

issuance. (~~None of the bonds authorized by this chapter may be sold for less than their par value.~~)

Sec. 6. Section 2, chapter 159, Laws of 1980 as amended by section 2, chapter 436, Laws of 1987 and RCW 43.99F.020 are each amended to read as follows:

For the purpose of providing funds to public bodies for the planning, design, acquisition, construction, and improvement of public waste disposal and management facilities, or for purposes of assisting a public body to obtain an ownership interest in waste disposal and management facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150-.060, in this state, the state finance committee is authorized to issue (~~at any time prior to January 1, 1990,~~) general obligation bonds of the state of Washington in the sum of four hundred fifty-four million six hundred fifty thousand dollars, or so much thereof as may be required, to finance the improvements defined in this chapter and all costs incidental thereto. The department may not use or permit the use of any funds derived from the sale of bonds authorized by this chapter for: (1) the support of a solid waste recycling activity or service in a locale if the department determines that the activity or service is reasonably available to persons within that locale from private enterprise; or (2) the construction of municipal wastewater facilities unless said facilities have been approved by a general purpose unit of local government in accordance with chapter 36.94 RCW, chapter 35.67 RCW, or RCW 56.08.020. These bonds shall be paid and discharged within thirty years of the date of issuance. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the net proceeds of the bonds to be sold.

Sec. 7. Section 6, chapter 159, Laws of 1980 and RCW 43.99F.060 are each amended to read as follows:

The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. (~~None of the bonds authorized in this chapter shall be sold for less than their par value.~~)

Sec. 8. Section 2, chapter 308, Laws of 1977 ex. sess. as last amended by section 10, chapter 4, Laws of 1985 ex. sess. and RCW 75.48.020 are each amended to read as follows:

For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee may issue general obligation bonds of the state of Washington in the sum of thirty-four million (~~five~~) six hundred sixty thousand dollars or so much thereof as may be

required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the net proceeds of such bonds to be sold.

Sec. 9. Section 6, chapter 308, Laws of 1977 ex. sess. as amended by section 166, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.48.060 are each amended to read as follows:

The state finance committee may prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. ~~((None of the bonds authorized in this chapter shall be sold for less than their par value.))~~

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 8, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 137

[House Bill No. 1033]

LEGISLATIVE BUDGET COMMITTEE VOUCHERS—AUTHORITY TO ISSUE

AN ACT Relating to approval of legislative budget committee vouchers; and amending RCW 44.28.050.

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

Sec. 1. Section 15, chapter 43, Laws of 1951 as amended by section 7, chapter 206, Laws of 1955 and RCW 44.28.050 are each amended to read as follows:

All expenses incurred by the committee, including salaries and expenses of employees, shall be paid upon voucher forms as provided by the auditor ~~((and signed by the chairman or vice chairman of the committee and attested by the secretary of said committee, and the authority of said chairman and secretary to sign vouchers shall continue until their))~~. The legislative auditor may be authorized by the legislative budget committee's executive committee to sign vouchers. Such authorization shall specify a dollar limitation and be set out in writing. A monthly report of such vouchers shall be submitted to the executive committee. If authorization is not given to the legislative auditor then the chair, or the vice-chair in the chair's absence, is authorized to sign vouchers. This authority shall continue until the chair's or vice-chair's successors are selected after each ensuing

session of the legislature. Vouchers may be drawn on funds appropriated generally by the legislature for legislative expenses or upon any special appropriation which may be provided by the legislature for the expenses of the committee or both.

Passed the House March 2, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 138

[House Bill No. 1239]

PENSION USURY—PLAN LOANS—EXEMPTION

AN ACT Relating to a pension plan exemption to the usury statutes; adding a new section to chapter 19.52 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 19.52 RCW to read as follows:

This chapter does not apply to any loan permitted under applicable federal law and regulations from a tax-qualified retirement plan to a person then a participant or a beneficiary under the plan.

This section affects loans being made, negotiated, renegotiated, extended, renewed, or revised on or after the effective date of this act.

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

Passed the House March 10, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 139

[House Bill No. 1885]

JUDICIAL RETIREMENT SYSTEM—INVESTMENT OF FUNDS

AN ACT Relating to technical clarifications of the judicial retirement system; amending RCW 2.14.080; and creating new sections.

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

NEW SECTION. Sec. 1. The amendment to RCW 2.10.140(1) in section 7(1), chapter 109, Laws of 1988 shall apply on a retroactive basis to the surviving spouse of any judge who retired before July 1, 1988, if the surviving spouse had not remarried before July 1, 1988.

NEW SECTION. Sec. 2. Section 28, chapter 109, Laws of 1988 shall apply on a retroactive basis to all income earned after July 1, 1988 by judges who retired before July 1, 1988 and by the surviving spouses of such judges.

Sec. 3. Section 19, chapter 109, Laws of 1988 and RCW 2.14.080 are each amended to read as follows:

(1) The administrator for the courts shall:

(a) Deposit or invest the contributions under RCW 2.14.090 in a credit union, savings and loan association, bank, or mutual savings bank;

(b) Purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or investment company licensed to contract business in this state; or

(c) Invest in any of the class of investments described in RCW 43.84.150.

(2) The state investment board or the committee for deferred compensation, at the request of the administrator for the courts, may invest moneys in the principal account. Moneys invested by the investment board shall be invested in accordance with RCW 43.84.150. Moneys invested by the committee for deferred compensation shall be invested in accordance with RCW 41.04.250. Except as provided in RCW 43.33A.160 or as necessary to pay a pro rata share of expenses incurred by the committee for deferred compensation, one hundred percent of all earnings from these investments shall accrue directly to the principal account. The earnings on any surplus balances in the principal account shall be credited to the principal account, notwithstanding RCW 43.84.090.

Passed the House March 15, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 140

[Senate Bill No. 5680]

STATE AUDITOR—RECORDS—AVAILABILITY

AN ACT Relating to the auditor of public accounts; and amending RCW 43.09.020.

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

Sec. 1. Section 43.09.020, chapter 8, Laws of 1965 and RCW 43.09-.020 are each amended to read as follows:

The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law.

~~((All books, papers, letters, and transactions pertaining to the office of state auditor shall be open to the inspection of the public generally during office hours:))~~

Passed the Senate March 6, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 141

[House Bill No. 1573]

SCHOOL LEVY REDUCTION FUNDS—DEFINED

AN ACT Relating to the identification of levy reduction funds in the appropriations act; amending RCW 84.52.0531; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 1, chapter 374, Laws of 1985 as last amended by section 1, chapter 252, Laws of 1988 and RCW 84.52.0531 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 the purpose of this section, the basic education allocation shall be determined pursuant to RCW 28A.41.130, 28A.41.140, and 28A.41.145, as now or hereafter amended: PROVIDED, That when determining the basic education allocation under subsection (4) of this section, nonresident full time equivalent pupils who are participating in a program provided for in chapter 28A.44 RCW or in any other program pursuant to an interdistrict agreement shall be included in the enrollment of the resident district and excluded from the enrollment of the serving district.

(2) For the purposes of subsection (5) of this section, a base year levy percentage shall be established. The base year levy percentage shall be equal to the greater of: (a) The district's actual levy percentage for calendar year 1985, (b) the average levy percentage for all school district levies in the state in calendar year 1985, or (c) the average levy percentage for all school district levies in the educational service district of the district in calendar year 1985.

(3) For excess levies for collection in calendar year 1988 and thereafter, the maximum dollar amount shall be the total of:

(a) The district's levy base as defined in subsection (4) of this section multiplied by the district's maximum levy percentage as defined in subsections (5) and (6) of this section; plus

(b) In the case of nonhigh [school] districts only, an amount equal to the total estimated amount due by the nonhigh school district to high school

districts pursuant to chapter 28A.44 RCW for the school year during which collection of the levy is to commence, less the increase in the nonhigh school district's basic education allocation as computed pursuant to subsection (1) of this section due to the inclusion of pupils participating in a program provided for in chapter 28A.44 RCW in such computation; less

(c) The maximum amount of state matching funds under RCW 28A.41.155 for which the district is eligible in that tax collection year.

(4) For excess levies for collection in calendar year 1988 and thereafter, a district's levy base shall be the sum of the following allocations received by the district for the prior school year, including allocations for compensation increases, adjusted by the percent increase per full time equivalent student in the state basic education appropriation between the prior school year and the current school year:

(a) The district's basic education allocation as determined pursuant to RCW 28A.41.130, 28A.41.140, and 28A.41.145;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Handicapped 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) State-wide 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.

(5) For levies to be collected in calendar year 1988, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's base year levy percentage as defined in subsection (2) of this section by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (7) of this section which are to be allocated to the district for the 1987-88 school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in calendar year 1988.

(6) For excess levies for collection in calendar year 1989 and thereafter, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's maximum levy percentage for the prior year or thirty percent, whichever is less, by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (7) of this section which are to be allocated to the district for the current school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in that calendar year.

(7) "Levy reduction funds" shall mean ~~((enhancements))~~ increases in state ((funding formulas)) funds from the prior school year for programs included under subsection (4) of this section~~((, as specified in this subsection. In the case of levies for collection in 1989 and thereafter, for each such program, levy reduction funds shall be the difference between:~~

~~(a) The district's state allocation for such program for the current school year calculated using the formula for distributing state funds for the program in the current school year; and~~

~~(b) The state allocation for such program that the district would receive for the program in the current school year if the formula used for distributing state funds for the program in the prior year were adopted in computing such allocation.~~

~~In all calculations under this subsection, formula factors shall be adjusted to reflect the salary levels and benefit rates to be used for state funding in the current school year and the allocations for nonemployee-related costs shall reflect adjustments for cost inflation from the prior school year as recognized in the current school year funding formula);~~ (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.

~~((In the case of levies for collection in calendar year 1988, levy reduction funds are those funds defined as levy reduction funds under the rules adopted by the superintendent of public instruction as of March 1, 1988, and do not include state allocations of local education program enhancement funds.))~~

(8) For the purposes of this section, "prior school year" shall mean the most recent school year completed prior to the year in which the levies are to be collected.

(9) For the purposes of this section, "current school year" shall mean the year immediately following the prior school year.

(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.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House March 14, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 142

[House Bill No. 2045]

SPECIAL FUEL TAX—COMPUTATION

AN ACT Relating to the tax on special fuel; and amending RCW 82.38.060.

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

Sec. 1. Section 7, chapter 175, Laws of 1971 ex. sess. and RCW 82-.38.060 are each amended to read as follows:

In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, it shall be prima facie presumed that not less than one gallon of special fuel was consumed for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross

vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight.

Passed the House March 9, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 143

[Substitute Senate Bill No. 5275]

HIGH VOLTAGE ELECTRIC AND MAGNETIC FIELDS—REVIEW OF PRESENT STUDIES

AN ACT Relating to high voltage electric and magnetic fields; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that it has not yet been proven that electric and magnetic field levels present in daily living are responsible for any adverse health effects. The legislature further finds that several large-scale studies are presently being conducted throughout the nation on this subject and that it would be premature to set state exposure levels for electric and magnetic fields before these studies have been analyzed.

NEW SECTION. Sec. 2. The Washington state institute for public policy, in consultation and cooperation with the Oregon department of energy, is directed to oversee a review of present studies related to the effects of electric and magnetic fields. The review shall use the resources of the state's higher education system, and shall include a report on the status of electric and magnetic field research. The report shall identify high-priority research projects that still need to be undertaken to identify cancer or other medical risks which may be related to exposure to electric and magnetic fields. The report shall be distributed to members of the energy and utilities committees of the house of representatives and the senate, and shall be due on December 1, 1989.

NEW SECTION. Sec. 3. The institute for public policy may accept grants, contributions, or appropriations from any person or governmental entity for the purposes of this act.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 144

[Senate Bill No. 5403]

SURPLUS PROPERTY—STATE ITEMS—DISPOSAL WITHOUT NOTICE—WHEN ALLOWED

AN ACT Relating to surplus property; and amending RCW 43.19.1919.

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

Sec. 1. Section 43.19.1919, chapter 8, Laws of 1965 as last amended by section 8, chapter 124, Laws of 1988 and RCW 43.19.1919 are each amended to read as follows:

The division of purchasing shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund: PROVIDED, Sales of capital assets may be made by the division of purchasing and a credit established in central stores for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939, as now or hereafter amended: PROVIDED FURTHER, That personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the division of purchasing to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director of general administration to be in the best interest of the state. The division of purchasing shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property: PROVIDED, FURTHER, That this section shall not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts.

This section does not apply to property under RCW 27.53.045.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 145

{Senate Bill No. 5756}

PUBLIC WORKS—SURETY BONDS—REQUIREMENTS

AN ACT Relating to sureties for public works bonds; and amending RCW 39.08.010.

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

Sec. 1. Section 1, chapter 207, Laws of 1909 as last amended by section 5, chapter 98, Laws of 1982 and RCW 39.08.010 are each amended to read as follows:

Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, (~~with two or more sureties, or~~) with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: **PROVIDED, HOWEVER,** That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: **PROVIDED FURTHER,** That on contracts of twenty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: **PROVIDED FURTHER,** That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the

laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

Passed the Senate March 13, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 146

[Senate Bill No. 5054]

MINORITY TEACHER RECRUITMENT PROGRAM

AN ACT Relating to teacher recruitment; and adding new sections to chapter 28A.67 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that it is important to have a teaching force that reflects the rich diversity of the students served in the public schools. The legislature further finds that certain groups, as characterized by ethnic background, are traditionally underrepresented in the teaching profession in the state of Washington and that the ethnic diversity of the student population in the state of Washington is increasing. The legislature intends to increase the number of people from underrepresented groups entering our teaching force.

NEW SECTION. Sec. 2. (1) The Washington state minority teacher recruitment program is established. The program shall be administered by the state board of education. The state board of education shall consult with the higher education coordinating board, representatives of institutions of higher education, education organizations having an interest in teacher recruitment issues, the superintendent of public instruction, the state board for community college education, the department of employment security, and the state board of vocational education within the office of the governor. The program shall be designed to recruit future teachers from students in the targeted groups who are in the ninth through twelfth grades and from adults in the targeted groups who have entered other occupations.

(2) The program shall include the following:

(a) Encouraging students in targeted groups in grades nine through twelve to acquire the academic and related skills necessary to prepare for the study of teaching at an institution of higher education;

(b) Promoting teaching career opportunities to develop an awareness of opportunities in the education profession;

(c) Providing opportunities for students to experience the application of regular high school course work to activities related to a teaching career; and

(d) Providing for increased cooperation among institutions of higher education including community colleges, the superintendent of public instruction, the state board of education, and local school districts in working toward the goals of the program.

NEW SECTION. Sec. 3. The superintendent of public instruction may grant funds, from moneys appropriated for the purpose of the Washington state minority teacher recruitment program, to selected institutions of higher education and selected school districts to assist in the development and implementation of the teacher recruitment program.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act are each added to chapter 28A.67 RCW.

Passed the Senate March 7, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 147

[Substitute Senate Bill No. 5419]

CHARTER BOATS—OREGON LICENSED—FISHING IN WASHINGTON WATERS

AN ACT Relating to charter boats; and amending RCW 75.28.095 and 75.30.070.

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

Sec. 1. Section 1, chapter 90, Laws of 1969 as last amended by section 1, chapter 9, Laws of 1988 and RCW 75.28.095 are each amended to read as follows:

(1) A charter boat license is required for a vessel to be operated as a charter boat from which food fish are taken for personal use. The annual license fees are:

Species	Resident Fee	Nonresident Fee
(a) Food fish other than salmon	\$100	\$200
(b) Salmon and other food fish	\$200	\$200

(2) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish, and which delivers food fish into state ports or delivers food fish taken from state waters into United States ports. "Charter boat" does not mean:

(a) Vessels not generally engaged in charter boat fishing which are under private lease or charter and operated by the lessee for the lessee's personal recreational enjoyment; or

(b) Vessels used by guides for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(3) A charter boat licensed in Oregon shall be permitted to fish without a charter boat license in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(4) A vessel shall not engage in both charter or sports fishing and commercial fishing on the same day. A vessel may be licensed for both charter boat fishing and for commercial fishing at the same time. The license or delivery permit allowing the activity not being engaged in shall be deposited with the fisheries patrol officer for that area or an agent designated by the director.

Sec. 2. Section 2, chapter 101, Laws of 1979 as amended by section 142, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.30.070 are each amended to read as follows:

(1) In addition to a salmon charter boat license, an angler permit is required to operate a salmon charter boat in salt water. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip and shall be issued annually without charge. The angler permit expires if the salmon charter boat license is not renewed.

(2) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 4, 1989.

CHAPTER 148

[Senate Bill No. 5502]

NATURAL RESOURCES DEPARTMENT—SALE OF VALUABLE MATERIALS—
PROCEDURE

AN ACT Relating to the sale of valuable materials; and amending RCW 79.01.132, 79.01.184, and 79.01.200.

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

Sec. 1. Section 16, chapter 2, Laws of 1983 as amended by section 2, chapter 136, Laws of 1988 and RCW 79.01.132 are each amended to read as follows:

When any timber, fallen timber, stone, gravel, or other valuable material on state lands is sold separate from the land, it may be sold as a lump sum sale or as a scale sale(~~(- PROVIDED, That upon the request of the purchaser, any lump sum sale over five thousand dollars appraised value shall be on the installment plan)~~). Lump sum sales under five thousand dollars appraised value shall be paid for in cash. The initial deposits required in RCW 79.01.204, not to exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales over five thousand dollars not less than five thousand dollars, shall be made on the day of the sale, and in the case of those sales appraised below the amount specified in RCW 79.01.200, the department of natural resources may require full cash payment on the day of sale. The purchaser shall notify the department of natural resources before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the department of natural resources may require, in the amount determined by the department, advance payment for the removal, processing, and/or cutting of timber or other valuable materials, or bank letters of credit, payment bonds, or assignments of savings accounts acceptable to the department as adequate security. The amount of such advance payments and/or security shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied: PROVIDED HOWEVER, That all or a portion of said initial deposit may be applied as the final payment for said materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

In all cases where timber, fallen timber, stone, gravel, or other valuable material is sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. Said specified period shall not exceed five years from the date of the purchase thereof: PROVIDED, That the specified periods in the sale contract

for stone, sand, fill material, or building stone shall not exceed twenty years: PROVIDED FURTHER, That in all cases where, in the judgment of the department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources may extend the time for the removal thereof for any period not exceeding twenty years from the date of purchase for the stone, sand, fill material or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material, upon payment to the state of a sum to be fixed by the department of natural resources, based on the estimated loss of income per acre to the state resulting from the granting of the extension but in no event less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale and the maximum extension payment shall be set forth in the contract. The method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The department of natural resources shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund to which was credited the original purchase price of the material so sold: AND PROVIDED FURTHER, That any sale of valuable materials of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at full appraised value without notice or advertising.

The provisions of this section apply unless otherwise provided by statute.

Sec. 2. Section 17, chapter 2, Laws of 1983 as amended by section 3, chapter 136, Laws of 1988 and RCW 79.01.184 are each amended to read as follows:

When the department of natural resources shall have decided to sell any state lands or valuable materials thereon, or with the consent of the board of regents of the University of Washington, or by legislative directive, shall have decided to sell any lot, block, tract, or tracts of university lands, or the timber, fallen timber, stone, gravel, or other valuable material thereon it shall be the duty of the department to forthwith fix the date, place, and time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published (~~once a week for four weeks next before the time it shall name in said notice,~~) not less than two times during a four week period prior to the time of sale in at least one newspaper ((published and)) of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold, or the material upon which is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the

department's Olympia office and the ((area)) region headquarters administering such sale and in the office of the county auditor of such county, which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the ((area)) region headquarters and the department's Olympia office: **PROVIDED**, That any sale of valuable materials of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at the full appraised value without notice or advertising.

Sec. 3. Section 50, chapter 255, Laws of 1927 as last amended by section 1, chapter 136, Laws of 1988 and RCW 79.01.200 are each amended to read as follows:

All sales of land shall be at public auction, and all sales of valuable materials shall be at public auction or by sealed bid to the highest bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than its appraised value: **PROVIDED**, That on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only: **PROVIDED FURTHER**, That when valuable material has been appraised at an amount not exceeding ((twenty)) one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold ~~((: AND PROVIDED FURTHER, That any sale of valuable materials of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash without notice or advertising))~~. This section does not apply to direct sales authorized in RCW 79.01.184.

Passed the Senate March 9, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 149

[Senate Bill No. 5871]

WINE RETAILER'S CLASS P LICENSE—GIFT SALES BUSINESSES—ELIGIBILITY

AN ACT Relating to wine retailer's licenses; and amending RCW 66.24.550.

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

Sec. 1. Section 10, chapter 85, Laws of 1982 as amended by section 1, chapter 40, Laws of 1986 and RCW 66.24.550 are each amended to read as follows:

There shall be a wine retailer's license to be designated as class P to solicit, take orders for, sell and deliver wine in bottles and original packages to persons other than the person placing the order. A class P license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum wine inventory requirement shall apply to holders of class P licenses. The fee for this license is seventy-five dollars per year. Delivery of wine under a class P license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no wine so delivered shall be opened on any premises licensed under this title. A class P license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of wine under a class P license shall be made only in conjunction with gifts or flowers.

Passed the Senate April 11, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 150

[Senate Bill No. 5887]

AIR POLLUTION CONTROL AUTHORITIES—PERSONAL SERVICE BY COUNTY COMMISSIONERS NOT REQUIRED

AN ACT Relating to allowing boards of county commissioners to appoint representatives to air pollution control authorities; and amending RCW 70.94.100.

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

Sec. 1. Section 10, chapter 232, Laws of 1957 as last amended by section 13, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.100 are each amended to read as follows:

(1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee as hereinafter provided, at least one of whom shall represent the city having the most population in the county, and two (~~county commissioners~~) representatives to be designated by the board of county commissioners. In the case of an authority comprised of two or three counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided, who shall represent the city having the most population in such county, and one (~~county commissioner~~) representative from each county

to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of four or five counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one (~~county commissioner~~) representative from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of six or more counties, the board shall be comprised of one (~~county commissioner~~) representative from each county to be designated by the board of county commissioners of each county making up the authority, and one appointee from each city with over one hundred thousand population to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. All board members shall hold office at the pleasure of the appointing body.

Passed the Senate March 9, 1989.

Passed the House April 11, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 151

[House Bill No. 1385]

INSURER—DEFINED FOR MERGERS OR CHANGES IN INSURANCE ENTITIES

AN ACT Relating to mergers, rehabilitation, and liquidation of insurance entities; amending RCW 48.31.020; and declaring an emergency.

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

Sec. 1. Section .31.02, chapter 79, Laws of 1947 and RCW 48.31.020 are each amended to read as follows:

For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.31.110, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers ((in the business of insurance)), health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, health care service contractors, or health maintenance organizations.

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

Passed the House April 18, 1989.
Passed the Senate April 14, 1989.
Approved by the Governor April 21, 1989.
Filed in Office of Secretary of State April 21, 1989.

CHAPTER 152

[Senate Bill No. 5023]

UTILITIES AND TRANSPORTATION COMMISSION—TARIFF CHANGES—
SUSPENSION

AN ACT Relating to proposed tariff changes; and amending RCW 80.28.060 and 80.36.110.

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

Sec. 1. Section 80.28.060, chapter 14, Laws of 1961 and RCW 80.28-.060 are each amended to read as follows:

Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission.

Sec. 2. Section 80.36.110, chapter 14, Laws of 1961 as amended by section 25, chapter 450, Laws of 1985 and RCW 80.36.110 are each amended to read as follows:

Unless the commission otherwise orders, no change shall be made in any rate, toll, rental, contract or charge, which shall have been filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, contract or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission for good cause shown may allow changes in rates, charges, tolls, rentals or contracts without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published. When any change is made in any rate, toll, contract, rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commission may designate.

Passed the Senate March 14, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 153

[Substitute Senate Bill No. 5868]

BIG GAME PERMITS—PURCHASE OF SINGLE HUNTING LICENSE VALIDATES USE FOR ENTIRE PERMIT PERIOD

AN ACT Relating to hunting licenses for special big game hunts; and adding a new section to chapter 77.32 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.32 RCW to read as follows:

Hunters who have valid big game permits that may be used after December 31 of the year of issuance, are not required to purchase a new

hunting license in order to use the big game permit during the period covered by the permit in the year following issuance of the big game permit.

Passed the Senate March 9, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 154

[Substitute Senate Bill No. 5681]

ASBESTOS PROJECTS

AN ACT Relating to asbestos projects; reenacting and amending RCW 49.26.013, 49.26.016, 49.26.100, 49.26.110, 49.26.120, 49.26.125, 49.26.130, and 49.26.901; reenacting RCW 49.26.115 and 49.26.150; creating a new section; making appropriations; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to make corrections to chapter 271, Laws of 1988, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution.

Sec. 2. Section 7, chapter 271, Laws of 1988 and RCW 49.26.013 are each reenacted and amended to read as follows:

(1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as ~~((required))~~ specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, ~~((shall be included as part of the written notice of the asbestos project required in RCW 49.26.120:))~~ and shall make a copy of the written report or statement ((shall be given to)) available upon written or oral request to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material

containing asbestos. A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees.

Sec. 3. Section 8, chapter 271, Laws of 1988 and RCW 49.26.016 are each reenacted and amended to read as follows:

(1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and ~~((submitting))~~ preparing and maintaining the report of the inspection, or ~~((submitting))~~ preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) ~~((submitting))~~ preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and RCW 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements. ~~((Any costs resulting from the halt of the project incurred by contractors or other parties affected by the halt of the project shall be paid by the owner or the owner's agent.))~~

(2) It is the responsibility of any contractor registered under chapter 18.27 RCW to request ~~((in writing))~~ a copy of the written report or statement required under RCW 49.26.013 from the owner or the owner's agent. No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) Any partnership, firm, corporation or sole proprietorship that begins any construction, renovation, remodeling, maintenance, repair, or demolition without meeting the requirements of RCW 49.26.013 and the notification requirement under RCW 49.26.120 shall lose the exemptions provided in RCW 49.26.110 and 49.26.120 for a period of not less than six months.

(4) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

(5) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140.

Sec. 4. Section 1, chapter 387, Laws of 1985 as amended by section 6, chapter 271, Laws of 1988 and RCW 49.26.100 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout (~~RCW 49.26.100 through 49.26.140~~) this chapter.

(1) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or the director's designee.

(4) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

~~((4))~~ (5) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project.

~~((5))~~ (6) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

~~((6))~~ (7) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

~~((7))~~ (8) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose.

Sec. 5. Section 2, chapter 387, Laws of 1985 as amended by section 10, chapter 271, Laws of 1988 and RCW 49.26.110 are each reenacted and amended to read as follows:

(1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees (~~(under the direct, on-site supervision of a certified asbestos supervisor. For the purposes of this chapter, on-site supervision shall include all activities taking place in the performance of a contract at one project location)~~). In cases excepted under this section(~~;~~):

(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.

(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.

(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos.

(2) To qualify for a certificate: (a) Certified asbestos workers and supervisors must have successfully completed a training course of at least thirty hours, provided or approved by the department, on the health and safety aspects of the removal and encapsulation of asbestos including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination, and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought; and (b) all applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department. These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

~~((2))~~ (4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

- (a) The certificate was obtained through error or fraud; or
- (b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so,

mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

~~((3))~~ (5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department.

Sec. 6. Section 11, chapter 271, Laws of 1988 and RCW 49.26.115 are each reenacted to read as follows:

Before working on an asbestos project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate coincide.

Sec. 7. Section 4, chapter 387, Laws of 1985 as amended by section 12, chapter 271, Laws of 1988 and RCW 49.26.120 are each reenacted and amended to read as follows:

(1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees (~~under the direct, on-site supervision of a certified asbestos supervisor~~). In cases excepted under this section(~~;~~):

(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.

(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.

(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule (~~(, including the written report or statement required under RCW 49.26.013)~~). The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule (~~(clarify)~~) establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

((2)) (3) The department shall (~~by rule, after consultation~~) consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air.

Sec. 8. Section 13, chapter 271, Laws of 1988 and RCW 49.26.125 are each reenacted and amended to read as follows:

Prenotification to the department under RCW 49.26.120(~~(, including submission of the report or statement required under RCW 49.26.013,))~~) shall not be required for:

(1) (a) Any asbestos project involving less than (~~(eleven))~~ forty-eight square feet of surface area, or less than ten linear feet of pipe unless the surface area of the pipe is greater than (~~(eleven))~~ forty-eight square feet. The person undertaking such a project shall keep the reports, or statements, and written descriptions required under RCW 49.26.013 and 49.26.120 which shall be available upon request (~~(by)~~) of the department. Employees and employee representatives (~~(shall be notified as required)~~) may request such reports under RCW 49.26.013(2).

(b) The director may waive the prenotification requirement upon written request of an owner for large-scale, on-going projects. In granting such a waiver, the director shall require the owner to provide prenotification if significant changes in personnel, methodologies, equipment, work site, or work procedures occur or are likely to occur. The director shall further require annual resubmittal of such notification.

(c) The director, upon review of an owner's reports, work practices, or other data available as a result of inspections, audits, or other authorized activities, may reduce the size threshold for prenotification required by this section. Such a change shall be based on the director's determination that significant problems in personnel, methodologies, equipment, work site, or work procedures are creating the potential for violations of this chapter or asbestos requirements under chapter 49.17 RCW. The new prenotification requirements shall be given in writing to the owner and shall remain in effect until modified or withdrawn in writing by the director.

(2) Emergency projects (~~(which are defined as emergencies by the rules of the department)~~).

(a) As used in this section, "emergency project" means a project that was not planned and results from a sudden, unexpected event, and does not include operations that are necessitated by nonroutine failure of equipment or systems.

(b) Emergency projects which disturb or release any material containing asbestos into the air shall be reported to the department within three working days after the commencement of the project in the manner otherwise required under this chapter. ((The person's employees and)) A notice shall be clearly posted adjacent to the work site describing the nature of the emergency project. The employees' collective bargaining representatives, or employee representatives, or designated representatives, if any, shall be notified of the emergency as soon as possible by the person undertaking the emergency project.

Incremental phasing in the conduct or design of asbestos projects or otherwise designing or conducting asbestos projects of a size less than forty-eight square feet, or other threshold for exemption as provided under this section, with the intent of avoiding prenotification requirements is a violation of this chapter.

Sec. 9. Section 3, chapter 387, Laws of 1985 as last amended by section 15, chapter 271, Laws of 1988 and RCW 49.26.130 are each reenacted and amended to read as follows:

(1) The department shall administer this chapter.

(2) The director of the department shall adopt, in accordance with chapters ~~((34.04))~~ 34.05 and 49.17 RCW, rules necessary to carry out this chapter.

(3) The department shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by

the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director of the department or the director's designee.

Sec. 10. Section 16, chapter 271, Laws of 1988 and RCW 49.26.150 are each reenacted to read as follows:

Any employee who notifies the department of any activity the employee reasonably believes to be a violation of this chapter or any rule adopted under this chapter or who participates in any proceeding related thereto shall have the same rights and protections against discharge or discrimination as employees are afforded under chapter 49.17 RCW.

Sec. 11. Section 19, chapter 271, Laws of 1988 and RCW 49.26.901 are each reenacted and amended to read as follows:

Sections 15, as reenacted and amended in 1989, and 18 ~~((of this act))~~, chapter 271, Laws of 1988, are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect ~~((immediately))~~ as of March 24, 1988. Sections 6 through ~~((14))~~ 8, 10 through 13, and 16, ((and 17 of this act)) chapter 271, Laws of 1988, as reenacted or amended and reenacted in 1989, shall take effect as of January 1, 1989. ~~((The department of labor and industries may immediately take such steps as are necessary to ensure that sections 6 through 18 of this act are implemented on those dates:))~~

NEW SECTION. Sec. 12. There is appropriated from the accident and medical aid funds to the department of labor and industries in a ratio consistent with other department appropriations for the biennium ending June 30, 1991, the sum of two hundred twenty-six thousand three hundred forty-three dollars, or as much thereof as may be necessary, to carry out the purposes of this act. Repayment shall be made from the asbestos account to the accident and medical aid funds of any moneys appropriated by law to implement this act.

NEW SECTION. Sec. 13. There is appropriated from the accident and medical aid funds to the department of labor and industries in a ratio consistent with other department appropriations for the biennium ending June 30, 1991, the sum of one million one hundred forty-five thousand one hundred eighty-eight dollars, or as much thereof as may be necessary, to increase enforcement of workplace asbestos requirements under chapter 49.17 RCW.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 10, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 155

[Senate Bill No. 5143]

BALLOTS—CANDIDATE'S NAMES—PLACEMENT

AN ACT Relating to ballot pages and the placement of candidates' names thereon; and amending RCW 29.34.085.

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

Sec. 1. Section 1, chapter 143, Laws of 1983 as amended by section 8, chapter 295, Laws of 1987 and RCW 29.34.085 are each amended to read as follows:

No voting device may contain the names of candidates for the offices of United States representative, state senator, state representative, county council, or county commissioner in more than one district (~~or the names of candidates for the office of precinct committee officer in more than one precinct~~). In all (~~even-year state~~) general elections, (~~voting devices shall be grouped by precinct and physically separated from the voting devices containing ballot pages for other precincts. For all other~~) primaries, and special elections, in each polling place the voting devices containing ballot pages for candidates from each congressional, legislative, or county council or commissioner district shall be grouped together and physically separated from those devices containing ballot pages for other districts. Each voter shall be directed by the precinct election officers to the correct group of voting devices (~~and an explanation to the voters that separate devices are being used for specific precincts shall be prominently displayed within the polling place~~).

Passed the Senate March 8, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 156

[Senate Bill No. 5452]

TRUCKS AND BUSES—LICENSING FEES—RATE BASED ON VEHICLE GROSS WEIGHT

AN ACT Relating to vehicle license fees; amending RCW 46.16.085, 46.16.090, and 46.68.035; reenacting and amending RCW 46.16.070; and creating a new section.

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

Sec. 1. Section 46.16.070, chapter 12, Laws of 1961 as last amended by section 3, chapter 244, Laws of 1987 and by section 4, chapter 9, Laws of 1987 1st ex. sess. and RCW 46.16.070 are each reenacted and amended to read as follows:

In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the excise tax prescribed in chapter 82.44 RCW and the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

4,000 lbs.	\$	((27.75))	<u>28.75</u>
6,000 lbs.	\$	((32.72))	<u>33.72</u>
8,000 lbs.	\$	((40.30))	<u>41.30</u>
10,000 lbs.	\$	((45.37))	<u>46.37</u>
12,000 lbs.	\$	((52.62))	<u>53.62</u>
14,000 lbs.	\$	((59.86))	<u>60.86</u>
16,000 lbs.	\$	((67.31))	<u>68.31</u>
18,000 lbs.	\$	((99.02))	<u>100.02</u>
20,000 lbs.	\$	((109.94))	<u>110.94</u>
22,000 lbs.	\$	((118.76))	<u>119.76</u>
24,000 lbs.	\$	((127.95))	<u>128.95</u>
26,000 lbs.	\$	((135.08))	<u>136.08</u>
28,000 lbs.	\$	((158.66))	<u>159.66</u>
30,000 lbs.	\$	((182.18))	<u>183.18</u>
32,000 lbs.	\$	((218.78))	<u>219.78</u>
34,000 lbs.	\$	((232.06))	<u>233.06</u>
36,000 lbs.	\$	((251.39))	<u>252.39</u>
38,000 lbs.	\$	((275.51))	<u>276.51</u>
40,000 lbs.	\$	((314.99))	<u>315.99</u>
42,000 lbs.	\$	((327.16))	<u>328.16</u>
44,000 lbs.	\$	((334.02))	<u>335.02</u>
46,000 lbs.	\$	((358.91))	<u>359.91</u>
48,000 lbs.	\$	((374.19))	<u>375.19</u>

50,000 lbs.	\$ ((405.36))	<u>406.36</u>
52,000 lbs.	\$ ((426.45))	<u>427.45</u>
54,000 lbs.	\$ ((460.02))	<u>461.02</u>
56,000 lbs.	\$ ((485.21))	<u>486.21</u>
58,000 lbs.	\$ ((504.53))	<u>505.53</u>
60,000 lbs.	\$ ((537.29))	<u>538.29</u>
62,000 lbs.	\$ ((575.50))	<u>576.50</u>
64,000 lbs.	\$ ((588.75))	<u>589.75</u>
66,000 lbs.	\$ ((655.14))	<u>656.14</u>
68,000 lbs.	\$ ((682.99))	<u>683.99</u>
70,000 lbs.	\$ ((735.14))	<u>736.14</u>
72,000 lbs.	\$ ((785.36))	<u>786.36</u>
74,000 lbs.	\$ ((853.15))	<u>854.15</u>
76,000 lbs.	\$ ((922.05))	<u>923.05</u>
78,000 lbs.	\$ ((1,006.10))	<u>1,007.10</u>
80,000 lbs.	\$ ((1,085.95))	<u>1,086.95</u>

The proceeds from such fees shall be distributed in accordance with RCW 46.68.035.

Effective with motor vehicle licenses that expire in January, 1989, and thereafter, a surcharge of four dollars and seventy-five cents is added to such fees. The proceeds of this surcharge shall be forwarded to the state treasurer to be deposited into the state patrol highway account of the motor vehicle fund.

Every motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(1) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(2) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

Sec. 2. Section 16, chapter 380, Laws of 1985 as last amended by section 4, chapter 244, Laws of 1987 and RCW 46.16.085 are each amended to read as follows:

In lieu of all other licensing fees, an annual license fee of (~~thirty-five~~) thirty-six dollars shall be collected in addition to the excise tax prescribed in chapter 82.44 RCW for: (1) Each trailer and semitrailer not subject to the license fee under RCW 46.16.065 or the capacity fees under RCW 46.16.080; (2) every pole trailer; (3) every converter gear or auxiliary axle not licensed as a combination under the provisions of RCW 46.16.083. The proceeds from this fee shall be distributed in accordance with RCW 46.68.035. This section does not pertain to travel trailers or personal use trailers that are not used for commercial purposes or owned by commercial enterprises.

Sec. 3. Section 10, chapter 18, Laws of 1986 and RCW 46.16.090 are each amended to read as follows:

Motor trucks, truck tractors, and tractors may be specially licensed based on the declared gross weight thereof for the various amounts set forth in the schedule provided in RCW 46.16.070 less (~~twenty-two~~) twenty-three dollars; divide the difference by two and add (~~twenty-two~~) twenty-three dollars, when such vehicles are owned and operated by farmers, but only if the following condition or conditions exist:

(1) When such vehicles are to be used for the transportation of the farmer's own farm, orchard, or dairy products, or the farmer's own private sector cultured aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse, and of supplies to be used on the farmer's farm. Fish other than those that are such private sector cultured aquatic products and forestry products are not considered as farm products; and/or

(2) When such vehicles are to be used for the infrequent or seasonal transportation by one farmer for another farmer in the farmer's neighborhood of products of the farm, orchard, dairy, or aquatic farm owned by the other farmer from point of production to market or warehouse, or supplies to be used on the other farm, but only if transportation for another farmer is for compensation other than money. Farmers shall be permitted an allowance of an additional eight thousand pounds, within the legal limits, on such vehicles, when used in the transportation of the farmer's own farm machinery between the farmer's own farm or farms and for a distance of not more than thirty-five miles from the farmer's farm or farms.

The department shall prepare a special form of application to be used by farmers applying for licenses under this section, which form shall contain a statement to the effect that the vehicle concerned will be used subject to the limitations of this section. The department shall prepare special insignia which shall be placed upon all such vehicles to indicate that the vehicle is specially licensed, or may, in its discretion, substitute a special license plate for such vehicle for such designation.

Operation of such a specially licensed vehicle in transportation upon public highways in violation of the limitations of this section is a traffic infraction.

Sec. 4. Section 21, chapter 380, Laws of 1985 and RCW 46.68.035 are each amended to read as follows:

All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) 34.644 percent, representing the vehicle licensing fee, shall be distributed according to the following formula:

(a) 76.772 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 6.348 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(c) 16.880 percent shall be deposited into the motor vehicle fund.

(2) The sum of ~~((one))~~ two dollars for each vehicle shall be deposited into the highway safety fund, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of ~~((one))~~ two dollars shall be credited to the current county expense fund.

(3) The remaining proceeds, representing the gross vehicle weight fee, identification fee, special fee, minimum fee, and application fee, shall be deposited into the motor vehicle fund.

NEW SECTION. Sec. 5. This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990.

Passed the Senate March 8, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 157

[Substitute Senate Bill No. 5501]

CORRECTIONS DEPARTMENT—HEALTH CARE SERVICES FOR INMATES— IMPLEMENTATION

AN ACT Relating to indemnification of contract providers of health care services to the department of corrections; and adding a new chapter to Title 72 RCW.

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

NEW SECTION. Sec. 1. It is the intent of the legislature that inmates in the custody of the department of corrections receive such basic medical

services as may be mandated by the federal Constitution and the Constitution of the state of Washington. Notwithstanding any other laws, it is the further intent of the legislature that the department of corrections may contract directly with any persons, firms, agencies, or corporations qualified to provide such services. Nothing in this chapter is to be construed to authorize a reduction in state employment in service component areas presently rendering such services or to preclude work typically and historically performed by department employees.

NEW SECTION. Sec. 2. As used in this chapter:

(1) "Department" means the department of corrections.

(2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.

(3) "Health profession" means and includes those licensed or regulated professions set forth in RCW 18.120.020(4).

(4) "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 CFR 405.2100, or blood bank federally licensed under 21 CFR 607.

(5) "Health care services" means and includes medical, dental, and mental health care services.

(6) "Secretary" means the secretary of the department of corrections.

NEW SECTION. Sec. 3. The department may develop and implement a health services plan for the delivery of health care services to inmates in the department's custody, at the discretion of the secretary.

NEW SECTION. Sec. 4. (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to inmates. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees.

NEW SECTION. Sec. 5. The secretary shall have the power to make rules necessary to carry out the intent of this chapter.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act shall constitute a new chapter in Title 72 RCW.

Passed the Senate March 3, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 158

[Substitute Senate Bill No. 5197]

EXECUTIVE STATE OFFICER—DEFINED

AN ACT Relating to reporting of public officials' financial affairs; amending RCW 42.17.240 and 42.17.2401; and creating new sections.

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

Sec. 1. Section 19, chapter 295, Laws of 1987 and RCW 42.17.240 are each amended to read as follows:

(1) Every elected official and every executive state officer shall after January 1st and before April 15th of each year file with the commission a statement of financial affairs for the preceding calendar year. However, any local elected official whose term of office expires immediately after December 31st shall file the statement required to be filed by this section for the year that ended on that December 31st.

(2) Every candidate shall within two weeks of becoming a candidate file with the commission a statement of financial affairs for the preceding twelve months.

(3) Every person appointed to a vacancy in an elective office or executive state officer position shall within two weeks of being so appointed file with the commission a statement of financial affairs for the preceding twelve months.

(4) A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(5) No individual may be required to file more than once in any calendar year.

(6) Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

(7) For the purposes of this section, the term "executive state officer" includes those listed in (~~RCW 43.17.020 and those listed in~~) RCW 42.17.2401.

(8) This section does not apply to incumbents or candidates for a federal office or the office of precinct committee officer.

Sec. 2. Section 2, chapter 34, Laws of 1984 as last amended by section 13, chapter 36, Laws of 1988 and RCW 42.17.2401 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of financial management, the director of personnel, the director of community development, the secretary of social and health services, the director of ecology, the director of labor and industries, the director of agriculture, the director of fisheries, the director of wildlife, the director of licensing, the director of general administration, the director of trade and economic development, the director of veterans affairs, the director of revenue, the secretary of corrections, the director of the state system of community colleges, the director of the department of information services, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of the higher education personnel board, the secretary of transportation, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the ((administrator)) director of the interagency committee for outdoor recreation, the director of parks and recreation, the executive secretary of the ((board of prison terms and paroles)) indeterminate sentence review board, the ((administrator)) executive director of the public disclosure commission, the director of retirement systems, the secretary of the utilities and transportation commission, the executive secretary of the board of tax appeals, the executive secretary of the higher education facilities authority, the executive secretary of the health care facilities authority, the secretary of the state finance committee, the administrator of the Washington state health care authority, the commissioner of employment security, the administrator of the Washington basic health plan, the director of the office of minority and women's business enterprises, the director of the lottery commission, the executive director of the state investment board, the director of the energy office, the director of the department of services for the blind, the chief of the Washington state patrol, the chairman of the energy facility site evaluation council, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Each member of the state board for community college education, information services board, forest practices board, forest practices appeals board, gambling commission, wildlife commission, higher education personnel board, transportation commission, horse racing commission, human rights commission, board of industrial insurance appeals, liquor control board, interagency committee for outdoor recreation, parks and recreation

commission, personnel board, personnel appeals board, (~~(board of prison terms and paroles)~~) indeterminate sentence review board, public disclosure commission, (~~(public employees' retirement system board;)~~) public pension commission, University of Washington board of regents, Washington State University board of regents, board of tax appeals, (~~(teachers' retirement system board of trustees;)~~) Central Washington University board of trustees, Eastern Washington University board of trustees, The Evergreen State College board of trustees, Western Washington University board of trustees, board of trustees of each community college, state housing finance commission, lottery commission, pollution control hearings board, shorelines hearing board, state convention and trade center board of directors, hospital commission, state investment board, committee for deferred compensation, state employees' benefits board, oil and gas conservation committee, Washington public power supply system executive board, higher education coordinating board, Washington health care facilities authority, higher education facilities authority, pacific northwest electric power and conservation planning council, state health coordinating council, and the utilities and transportation commission.

NEW SECTION. Sec. 3. When section 2 of this act is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order.

NEW SECTION. Sec. 4. Persons identified as executive officers under RCW 42.17.2401(4), who were appointed to their positions before the effective date of this act, and who were not required to file a statement of financial affairs at the time of their appointment, are exempt from the requirements of RCW 42.17.240 until they are reappointed to such positions.

Passed the Senate March 14, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 159

[Second Substitute Senate Bill No. 5174]

HYDROPOWER—COMPREHENSIVE STATE PLAN

AN ACT Relating to a comprehensive state hydropower plan; and creating new sections.

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

NEW SECTION. Sec. 1. **LEGISLATIVE FINDINGS.** The legislature finds that the task force on hydroelectric development and resource protection has recommended that:

(1) The state adopt goals to direct future development of hydropower and protection of river-related resources;

(2) The state take steps to enhance the existing hydropower permit review process; and

(3) The state develop, in concert with appropriate interests, a comprehensive state hydropower plan.

NEW SECTION. Sec. 2. HYDRO TASK FORCE. (1) The Washington state energy office shall contract with an independent facilitator to reconvene and coordinate the task force assembled to implement section 301, chapter 7, Laws of 1987 1st ex. sess. The task force shall prepare by March 31, 1991, a state comprehensive hydropower plan to serve the broad public interest regarding development of cost-effective electricity and conservation of river-related environmental values. Task force meetings shall be open to the public. The facilitator shall assist the task force in appropriate efforts to inform the general public regarding project concepts and progress. Task force members shall make appropriate efforts to inform the interest groups they represent.

(2) By December 15, 1989, the task force shall engage in a midpoint review whereby participants can jointly appraise the progress of the project. If, in the opinion of the participants, a consensus to continue as a task force cannot be achieved, the executive agencies shall use their existing statutory authority to develop a plan, with the assistance of all affected parties and participating agencies, building upon the work that has been done by the task force.

(3) If the task force continues beyond December 15, 1989, it shall by July 1, 1990, recommend to the legislature a lead agency for implementation and management of the state comprehensive hydropower plan.

NEW SECTION. Sec. 3. POLICY GUIDELINES. Future development of hydropower and protection of river-related resources shall be guided by policies and programs which:

(1) Create opportunities for balanced development of cost-effective and environmentally sound hydropower projects by a range of development interests;

(2) Protect significant values associated with the state's rivers, including fish and wildlife populations and habitats, water quality and quantity, unique physical and botanical features, archeological sites, and scenic and recreational resources;

(3) Protect the interests of the citizens of the state regarding river-related economic development, municipal water supply, supply of electric energy, flood control, recreational opportunity, and environmental integrity;

(4) Fully utilize the state's authority in the federal hydropower licensing process.

NEW SECTION. Sec. 4. PLAN CONTENT. (1) At a minimum, the plan shall designate two categories of resource agreement areas: (a) Sensitive areas where hydropower development is likely to conflict with significant environmental values, and (b) less sensitive areas where development will not conflict with or may enhance environmental values. Some areas may remain unclassified due to lack of information or if they fall between the two categories. The plan shall integrate resource agreement area findings with existing state laws and programs including instream flow basin plans prepared by the department of ecology, watershed planning coordinated by the department of fisheries, watershed planning coordinated through the Puget Sound water quality authority, watershed planning for municipal water supply, the scenic rivers program administered by the parks and recreation commission, and the planning process developed through the joint select committee on water resources policy and any actions resulting from that process.

(2) At a minimum, the final plan report shall:

- (a) List applicable laws, rules, and policies;
- (b) Describe the waterways or basins covered by the plan;
- (c) Designate the categories of resource agreement area for each waterway or basin;
- (d) Describe, for each waterway where hydropower is to be affected, the significant resources that cause the waterway or basin to be so designated;
- (e) Identify goals, objectives, and recommendations for improving, developing, or conserving affected waterways;
- (f) Describe how the plan is to be integrated with other planning activities and policy initiatives and how the plan will be implemented and amended;
- (g) Assess the anticipated effect of the plan on hydropower development and resource protection; and
- (h) Describe the plan development process.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

Passed the Senate March 14, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 160

[Senate Bill No. 5368]

URBAN ARTERIALS—PRIORITY PROJECTS—SELECTION CONSIDERATIONS—
MOVEMENT OF PERSONS

AN ACT Relating to urban arterials; and amending RCW 47.26.220.

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

Sec. 1. Section 28, chapter 83, Laws of 1967 ex. sess. as amended by section 23, chapter 167, Laws of 1988 and RCW 47.26.220 are each amended to read as follows:

Counties and cities, in preparing their respective six year programs relating to urban arterial improvements to be funded by the urban arterial trust account, shall select specific priority improvement projects for each functional class of arterial based on the rating of each arterial section proposed to be improved in relation to other arterial sections within the same functional class, taking into account the following:

- (1) Its structural ability to carry loads imposed upon it;
- (2) Its capacity to move traffic and persons at reasonable speeds without undue congestion;
- (3) Its adequacy of alignment and related geometrics;
- (4) Its accident experience; and
- (5) Its fatal accident experience.

The six year construction programs shall remain flexible and subject to annual revision as provided in RCW 36.81.121 and 35.77.010.

Passed the Senate February 13, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 161

[Substitute Senate Bill No. 5486]

REAL ESTATE BROKERS AND SALESPERSONS—LICENSES

AN ACT Relating to licenses for real estate brokers and salespersons; amending RCW 18.85.110, 18.85.140, and 18.85.190; and providing an effective date.

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

Sec. 1. Section 3, chapter 252, Laws of 1941 as last amended by section 20, chapter 240, Laws of 1988 and RCW 18.85.110 are each amended to read as follows:

This chapter shall not apply to (1) any person who purchases property and/or a business opportunity for his own account, or that of a group of which he is a member, or who, as the owner or part owner of property,

and/or a business opportunity, in any way disposes of the same; nor, (2) any duly authorized attorney in fact acting without compensation, or an attorney at law in the performance of his duties; nor, (3) any receiver, trustee in bankruptcy, executor, administrator, guardian, or any person acting under the order of any court, or selling under a deed of trust; nor, (4) any secretary, bookkeeper, accountant, or other office personnel who does not engage in any conduct or activity specified in any of the definitions under RCW 18.85.010; nor, (5) any owner of rental or lease property, members of the owner's family whether or not residing on such property, or a resident manager of a complex of residential dwelling units wherein such manager resides; nor, (6) any person who manages residential dwelling units on an incidental basis and not as his principal source of income so long as that person does not advertise or hold himself out to the public by any oral or printed solicitation or representation that he is so engaged; nor, (7) only with respect to the rental or lease of individual storage space, any person who owns or manages a self-service storage facility as defined under chapter 19.150 RCW.

Sec. 2. Section 2, chapter 25, Laws of 1979 as amended by section 5, chapter 332, Laws of 1987 and RCW 18.85.140 are each amended to read as follows:

Before receiving his or her license every real estate broker, every associate real estate broker, and every real estate salesperson must pay a license fee as prescribed by the director by rule. Every license issued under the provisions of this chapter expires on the applicant's second birthday following issuance of the license (~~((which date will henceforth be the renewal date))~~). Licenses issued to partnerships expire on a date prescribed by the director by rule(~~((which date will henceforth be their renewal date))~~). Licenses issued to corporations expire on a date prescribed by the director by rule, (~~((which date will henceforth be their renewal date;))~~) except that if the corporation registration or certificate of authority filed with the secretary of state expires, the real estate broker's license issued to the corporation shall expire on that date. Licenses must be renewed every two years on or before the ((renewal)) date ((an annual)) established under this section and a biennial renewal license fee as prescribed by the director by rule must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedures and qualifications for initial licensing, including the successful completion of any applicable examinations.

The director shall issue to each active licensee a license and a pocket identification card in such form and size as he or she shall prescribe.

Sec. 3. Section 42, chapter 52, Laws of 1957 as last amended by section 6, chapter 332, Laws of 1987 and RCW 18.85.190 are each amended to read as follows:

A real estate broker may apply to the director for authority to establish one or more branch offices under the same name as the main office upon the payment of a fee as prescribed by the director by rule. The director shall issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. Each branch office shall be required to have a branch manager who shall be an associate broker authorized by the designated broker to perform the duties of a branch manager.

A branch office license shall not be required where real estate sales activity is conducted on and, limited to a particular subdivision or tract, if a licensed office or branch office is located within thirty-five miles of the subdivision or tract. ~~((A real estate broker shall apply for a branch office license if real estate sales activity on the particular subdivision or tract is five days or more per week.))~~

NEW SECTION. Sec. 4. Section 2 of this act shall take effect January 1, 1991.

Passed the Senate March 3, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 162

[Substitute Senate Bill No. 5469]

ALCOHOLISM TREATMENT FACILITY RECORDS—RELEASE

AN ACT Relating to alcoholism treatment facility patient records; and amending RCW 70.96A.150.

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

Sec. 1. Section 15, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.150 are each amended to read as follows:

(1) The registration and other records of treatment facilities shall remain confidential ~~((and are privileged to the patient))~~. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting

of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

Passed the Senate March 8, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 163

[Substitute Senate Bill No. 5553]

EXCURSION BUSES—REGULATION BY UTILITIES AND TRANSPORTATION COMMISSION AS CHARTER BUSES

AN ACT Relating to regulation of excursion service carriers; and amending RCW 81.68.010, 81.68.015, 81.68.020, 81.68.030, 81.68.060, 81.70.020, 81.70.220, 81.70.250, 81.70.260, 81.70.270, 81.70.280, 81.70.290, 81.70.320, 81.70.330, 81.70.340, and 81.70.350.

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

Sec. 1. Section 81.68.010, chapter 14, Laws of 1961 as last amended by section 1, chapter 166, Laws of 1984 and RCW 81.68.010 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and baggage, mail, and express on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

(4) (~~"Excursion service company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons for compensation over any public highway in this state from points~~)

~~of origin within the incorporated limits of any city or town or area designated by the commission, to any other location within the state of Washington and returning to that origin. The service shall not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered or afforded shall be computed, charged, or assessed by the excursion service company on an individual fare basis.~~

~~(5))~~ "Public highway" means every street, road, or highway in this state.

~~((6))~~ (5) The words "between fixed termini or over a regular route" mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor propelled vehicle, even though there may be departure from the termini or route, whether the departures are periodic or irregular. Whether or not any motor propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this section is a question of fact, and the finding of the commission thereon is final and is not subject to review.

Sec. 2. Section 2, chapter 166, Laws of 1984 and RCW 81.68.015 are each amended to read as follows:

This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, motor propelled vehicles operated exclusively in transporting agricultural, horticultural, dairy, or other farm products from the point of production to the market, or any other carrier that does not come within the term "auto transportation company" (~~(or "excursion service company")~~) as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with nor infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation company (~~(or excursion service company)~~) certificated under this chapter.

Sec. 3. Section 81.68.020, chapter 14, Laws of 1961 as amended by section 3, chapter 166, Laws of 1984 and RCW 81.68.020 are each amended to read as follows:

No corporation or person, their lessees, trustees, or receivers or trustees appointed by any court whatsoever, may engage in the business of operating as a common carrier any motor propelled vehicle for the transportation of persons, and baggage, mail, and express on the vehicles of auto transportation companies carrying passengers, between fixed termini or over a regular route(~~(; or the vehicles of an excursion service company between the designated areas of pickup and points of destination;))~~) for compensation on any public highway in this state, except in accordance with the provisions of this chapter.

Sec. 4. Section 81.68.030, chapter 14, Laws of 1961 as amended by section 4, chapter 166, Laws of 1984 and RCW 81.68.030 are each amended to read as follows:

The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company (~~(and every excursion service company))~~) in this state as provided in this section. Under this authority, it shall for each auto transportation company (~~(and for each excursion service company))~~):

- (1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;
- (2) Regulate the accounts, service, and safety of operations;
- (3) Require the filing of annual and other reports and of other data;
- (4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;
- (5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate under this chapter, and an opportunity to the holder to be heard, at which it shall be proven that the holder wilfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070.

Sec. 5. Section 81.68.060, chapter 14, Laws of 1961 as last amended by section 6, chapter 166, Laws of 1984 and RCW 81.68.060 are each amended to read as follows:

In granting certificates to operate any auto transportation company (~~(or excursion service company))~~, for transporting for compensation persons and baggage, mail, and express on the vehicles of auto transportation companies (~~(or excursion service companies))~~ carrying passengers, the commission shall require the owner or operator to first procure liability and

property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor propelled vehicle used or to be used in transporting persons for compensation, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person and not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less and not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all persons receiving personal injury by reason of at least one act of negligence and not less than fifty thousand dollars for damage to property of any person other than the assured. The commission shall fix the amount of the insurance policy or policies or security deposit giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The liability and property damage insurance or surety bond shall be maintained in force on [the] motor propelled vehicle while so used, and each policy for liability or property damage insurance or surety bond required by this section shall be filed with the commission and kept in full force and effect. Failure so to do is cause for the revocation of the certificate.

Sec. 6. Section 3, chapter 150, Laws of 1965 as last amended by section 1, chapter 30, Laws of 1988 and RCW 81.70.020 are each amended to read as follows:

Unless the context otherwise requires, the definitions and general provisions set forth in this section shall govern the construction of this chapter:

(1) "Commission" means the Washington utilities and transportation commission;

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees or receivers;

(3) "Public highway" includes every public street, road or highway in this state;

(4) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;

(5) Subject to the exclusions of RCW 81.70.030, "charter party carrier of passengers" means every person engaged in the transportation of a group of persons, who, pursuant to a common purpose and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(6) Subject to the exclusion of RCW 81.70.030, "excursion service carrier" means every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin

within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service shall not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered or afforded shall be computed, charged, or assessed by the excursion service company on an individual fare basis.

Sec. 7. Section 2, chapter 30, Laws of 1988 and RCW 81.70.220 are each amended to read as follows:

No person may engage in the business of a charter party carrier or excursion service carrier of persons over any public highway without first having obtained a certificate from the commission to do so or having registered as an interstate carrier.

Sec. 8. Section 5, chapter 30, Laws of 1988 and RCW 81.70.250 are each amended to read as follows:

The commission may cancel, revoke, or suspend any certificate issued under this chapter on any of the following grounds:

- (1) The violation of any of the provisions of this chapter;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the commission pursuant to this chapter;
- (3) Failure of a charter party carrier or excursion service carrier of passengers to pay a fee imposed on the carrier within the time required by law;
- (4) Failure of a charter party carrier or excursion service carrier to maintain required insurance coverage in full force and effect; or
- (5) Failure of the certificate holder to operate and perform reasonable service.

Sec. 9. Section 6, chapter 30, Laws of 1988 and RCW 81.70.260 are each amended to read as follows:

After the cancellation or revocation of a certificate or interstate registration or during the period of its suspension, it is unlawful for a charter party carrier or excursion service carrier of passengers to conduct any operations as such a carrier.

Sec. 10. Section 7, chapter 30, Laws of 1988 and RCW 81.70.270 are each amended to read as follows:

It is the duty of the commission to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations. The commission shall establish such rules and regulations and require such reports as are necessary to carry out the provisions of this chapter.

Sec. 11. Section 8, chapter 30, Laws of 1988 and RCW 81.70.280 are each amended to read as follows:

(1) In granting certificates under this chapter, the commission shall require charter party carriers and excursion service carriers of passengers to procure and continue in effect during the life of the certificate, liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in the following amounts:

(a) Not less than one hundred thousand dollars for any recovery for personal injury by one person; and

(b) Not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and

(c) Not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all receiving personal injury by reason of at least one act of negligence; and

(d) Not less than fifty thousand dollars for damage to property of any person other than the insured.

(2) The commission shall fix the amount of the insurance policy or policies or security deposit giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. Such liability and property damage insurance or surety bond shall be maintained in force on each motor-propelled vehicle while so used. Each policy for liability or property damage insurance or surety bond required herein shall be filed with the commission and kept in effect and a failure so to do is cause for revocation of the certificate.

Sec. 12. Section 9, chapter 30, Laws of 1988 and RCW 81.70.290 are each amended to read as follows:

A charter party carrier or excursion service carrier of passengers authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the interstate commerce commission of the United States in accordance with the United States interstate commerce act applicable to self-insurance by motor carriers is exempt from RCW 81.70.280 relating to the carrying or filing of insurance policies or bonds in connection with such operations as long as such qualification remains effective.

The commission may require proof of the existence and continuation of qualification with the interstate commerce commission to be made by affidavit of the charter party carrier or excursion service carrier in a form the commission may prescribe.

Sec. 13. Section 12, chapter 30, Laws of 1988 and RCW 81.70.320 are each amended to read as follows:

(1) An application for a certificate or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate, shall be accompanied

by such filing fees as the commission may prescribe by rule, however the fee shall not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter shall be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter shall reasonably approximate the cost of supervising and regulating charter party carriers and excursion service carriers subject thereto, and to that end the commission is authorized to decrease the schedule of fees provided for in RCW 81.70.350 by general order entered before November 1 of any year in which the commission determines that the moneys then in the charter party carrier and excursion service carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers during the succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, such increase, not in any event to exceed the schedule set forth in this chapter, may be effected by a similar general order entered before November 1 of any calendar year.

Sec. 14. Section 13, chapter 30, Laws of 1988 and RCW 81.70.330 are each amended to read as follows:

It is unlawful for a charter party carrier or excursion service carrier to operate a motor bus upon the highways of this state unless there is firmly affixed to the vehicle on both sides thereof, the name of the carrier and the certificate or permit number of such carrier. The characters composing such identification shall be of sufficient size to be clearly distinguishable at a distance of at least fifty feet from the vehicle.

Sec. 15. Section 14, chapter 30, Laws of 1988 and RCW 81.70.340 are each amended to read as follows:

It is unlawful for a charter party carrier or excursion service carrier of passengers engaged in interstate or foreign commerce to use any of the public highways of this state for the transportation of passengers in interstate or foreign commerce, unless such carrier has identified its vehicles and registered its interstate or foreign operations with the commission. Interstate and foreign carriers possessing operating authority issued by the interstate commerce commission shall register such authority pursuant to Public Law 89-170, as amended, and the regulations of the interstate commerce commission adopted thereunder. Interstate and foreign charter party carriers and excursion service carriers of passengers exempt from regulation by the interstate commerce commission shall register their interstate operations under regulations adopted by the commission, which shall, to the maximum extent practical, conform to the regulations promulgated by the interstate commerce commission under Public Law 89-170, as amended. All other provisions of this chapter shall be applicable to motor carriers of passengers

engaged in interstate or foreign commerce insofar as the same are not prohibited under the Constitution of the United States or federal statute.

Sec. 16. Section 15, chapter 30, Laws of 1988 and RCW 81.70.350 are each amended to read as follows:

(1) The commission shall collect from each charter party carrier and excursion service carrier holding a certificate issued pursuant to this chapter and from each interstate or foreign carrier subject to this chapter an annual regulatory fee, to be established by the commission but which in total shall not exceed the cost of supervising and regulating such carriers, for each bus used by such carrier.

(2) All fees prescribed by this section shall be due and payable on or before December 31 of each year, to cover the ensuing year beginning February 1.

Passed the Senate March 14, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 164

[Senate Bill No. 5595]

DRUG SAMPLES—DISTRIBUTION TO HOSPITAL PHARMACIES AND OTHER MEDICAL ENTITIES

AN ACT Relating to distribution of drug samples; amending RCW 69.45.050; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state.

Sec. 2. Section 5, chapter 411, Laws of 1987 and RCW 69.45.050 are each amended to read as follows:

(1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

- (a) The recipient's name, address, and professional designation;
 - (b) The name, strength, and quantity of the drug samples delivered;
 - (c) The name or identification of the manufacturer and of the individual distributing the drug sample; and
 - (d) The dated signature of the practitioner requesting the drug sample.
- (3) No fee or charge may be imposed for sample drugs distributed in this state.
- (4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance.

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

Passed the Senate March 3, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 165

[Senate Bill No. 5583]

BUSINESS CORPORATION ACT

AN ACT Relating to the Washington business corporation act; adding a new title to the Revised Code of Washington to be codified as Title 23B; creating a new section; repealing RCW 23A.04.010, 23A.08.010, 23A.08.020, 23A.08.025, 23A.08.026, 23A.08.030, 23A.08.040, 23A.08.050, 23A.08.060, 23A.08.070, 23A.08.080, 23A.08.090, 23A.08.100, 23A.08.110, 23A.08.120, 23A.08.130, 23A.08.135, 23A.08.140, 23A.08.150, 23A.08.155, 23A.08.180, 23A.08.190, 23A.08.195, 23A.08.200, 23A.08.205, 23A.08.220, 23A.08.230, 23A.08.240, 23A.08.250, 23A.08.255, 23A.08.260, 23A.08.265, 23A.08.270, 23A.08.280, 23A.08.290, 23A.08.300, 23A.08.305, 23A.08.310, 23A.08.320, 23A.08.325, 23A.08.330, 23A.08.340, 23A.08.343, 23A.08.345, 23A.08.350, 23A.08.360, 23A.08.370, 23A.08.380, 23A.08.390, 23A.08.395, 23A.08.400, 23A.08.410, 23A.08.420, 23A.08.425, 23A.08.435, 23A.08.445, 23A.08.450, 23A.08.460, 23A.08.470, 23A.08.490, 23A.08.500, 23A.12.010, 23A.12.020, 23A.12.030, 23A.12.040, 23A.12.060, 23A.16.010, 23A.16.020, 23A.16.030, 23A.16.040, 23A.16.050, 23A.16.060, 23A.16.075, 23A.16.080, 23A.20.010, 23A.20.020, 23A.20.025, 23A.20.030, 23A.20.040, 23A.20.050, 23A.20.060, 23A.20.070, 23A.24.010, 23A.24.020, 23A.24.030, 23A.24.040, 23A.28.010, 23A.28.020, 23A.28.030, 23A.28.040, 23A.28.050, 23A.28.060, 23A.28.070, 23A.28.080, 23A.28.090, 23A.28.100, 23A.28.110, 23A.28.120, 23A.28.125, 23A.28.127, 23A.28.129, 23A.28.130, 23A.28.135, 23A.28.141, 23A.28.150, 23A.28.160, 23A.28.170, 23A.28.180, 23A.28.190, 23A.28.200, 23A.28.210, 23A.28.220, 23A.28.230, 23A.28.240, 23A.28.250, 23A.32.010, 23A.32.020, 23A.32.030, 23A.32.040, 23A.32.050, 23A.32.060, 23A.32.070, 23A.32.072, 23A.32.073, 23A.32.075, 23A.32.080, 23A.32.090, 23A.32.100, 23A.32.130, 23A.32.140, 23A.32.150, 23A.32.160, 23A.32.170, 23A.32.173, 23A.32.176, 23A.32.180, 23A.32.190, 23A.32.200, 23A.36.010, 23A.36.020, 23A.36.030, 23A.36.040, 23A.36.050, 23A.36.060, 23A.40.010, 23A.40.020, 23A.40.030, 23A.40.032, 23A.40.035, 23A.40.040, 23A.40.060, 23A.40.070, 23A.40.072, 23A.40.080, 23A.44.010, 23A.44.020, 23A.44.030, 23A.44.040, 23A.44.050, 23A.44.060, 23A.44.070,

23A.44.080, 23A.44.100, 23A.44.110, 23A.44.120, 23A.44.130, 23A.44.140, 23A.44.145, 23A.44.146, 23A.44.150, 23A.44.160, 23A.44.170, 23A.44.180, 23A.50.010, 23A.50.020, 23A.50.030, 23A.50.040, 23A.50.050, 23A.50.900, 23A.98.010, 23A.98.020, 23A.98.030, and 23A.98.050; prescribing penalties; and providing an effective date.

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

GENERAL PROVISIONS

NEW SECTION. Sec. 1. SHORT TITLE. This title shall be known and may be cited as the "Washington business corporation act."

NEW SECTION. Sec. 2. RESERVATION OF POWER TO AMEND OR REPEAL. The legislature has power to amend or repeal all or part of this title at any time and all domestic and foreign corporations subject to this title are governed by the amendment or repeal.

NEW SECTION. Sec. 3. FILING REQUIREMENTS. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) This title must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this title. It may contain other information as well.

(4) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.

(8) If the secretary of state has prescribed a mandatory form for the document under section 4 of this act, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy,

the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.

NEW SECTION. Sec. 4. FORMS. The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) the annual report; and (5) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory.

NEW SECTION. Sec. 5. FILING, SERVICE, AND COPYING FEES. (1) The secretary of state shall collect in accordance with the provisions of this title:

- (a) Fees for filing documents and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees as provided in sections 16 through 21 of this act;
- (d) Penalty fees; and
- (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(a) One hundred seventy-five dollars, pursuant to sections 18 and 20 of this act, for:

- (i) Articles of incorporation; and
- (ii) Application for certificate of authority;

(b) Twenty-five dollars for:

- (i) Articles of correction;
- (ii) Amendment of articles of incorporation;

(iii) Restatement of articles of incorporation, with or without amendment;

(iv) Articles of merger or share exchange;

(v) Articles of revocation of dissolution;

(vi) Application for amended certificate of authority; and

(vii) Application for reinstatement;

(c) Ten dollars for:

(i) Application for reservation, registration, or assignment of reserved name;

(ii) Corporation's statement of change of registered agent or registered office, or both;

(iii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

(iv) Annual report; and

(v) Any document not listed in this subsection that is required or permitted to be filed under this title;

(d) No fee for:

- (i) Agent's consent to act as agent;
- (ii) Agent's resignation, if appointed without consent;
- (iii) Articles of dissolution;
- (iv) Certificate of reinstatement;
- (v) Certificate of judicial dissolution;
- (vi) Application for certificate of withdrawal; and
- (vii) Certificate of revocation of authority to transact business.

(3) The secretary of state shall collect a fee of twenty-five dollars per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(4) The secretary of state shall collect from every person, except corporations organized under the laws of this state for which existing law provides a different fee schedule:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.

(5) For annual license fees for domestic and foreign corporations, see sections 16, 17, 19, and 21 of this act. For penalties for nonpayment of annual license fees and failure to complete annual report, see section 23 of this act.

NEW SECTION. Sec. 6. **EFFECTIVE TIME AND DATE OF DOCUMENT.** (1) Except as provided in subsection (2) of this section and section 7(3) of this act, a document accepted for filing is effective on the date it is filed by the secretary of state and at the time on that date specified in the document. If no time is specified in the document, the document is effective at the close of business on the date it is filed by the secretary of state.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(3) When a document is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the document to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of

state's filing date shall relate back to and be shown as the date on which the secretary of state first received the document in acceptable form.

NEW SECTION. Sec. 7. CORRECTING FILED DOCUMENT. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

NEW SECTION. Sec. 8. FILING DUTY OF SECRETARY OF STATE. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 3 of this act, the secretary of state shall file it.

(2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the document copy. After filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

NEW SECTION. Sec. 9. JUDICIAL REVIEW OF SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT. If the secretary of state refuses to file a document delivered to the office for filing, the person submitting the document, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW.

NEW SECTION. Sec. 10. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT. A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a document or a copy of a document filed by the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

NEW SECTION. Sec. 11. CERTIFICATE OF EXISTENCE OR AUTHORIZATION. (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this title 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 corporation;

(c) The corporation's most recent annual report required by section 187 of this act has been delivered to the secretary of state; and

(d) Articles of dissolution or an application for withdrawal have 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 corporation is in existence or is authorized to transact business in the corporate form in this state.

NEW SECTION. Sec. 12. PENALTY FOR SIGNING FALSE DOCUMENT. Any person who signs a document such person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 13. POWERS. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this title, including adoption, amendment, or repeal of rules for the efficient administration of this title.

NEW SECTION. Sec. 14. TITLE DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes mailing.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in section 15 of this act.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes authority, county, district, and municipality.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" has the meaning provided in section 15 of this act.

(16) "Person" includes an individual and an entity.

(17) "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.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to

section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

(20) "Record date" means the date established under sections 60 through 79 of this act 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.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 100(3) of this act for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "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.

(24) "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.

(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(27) "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.

NEW SECTION. Sec. 15. NOTICE. (1) Notice under this title must be in writing 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) Written notice may 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 written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be

communicated by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its 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 an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(i) 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

(ii) 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.

(b) Oral notice is effective when communicated if communicated in a comprehensible manner.

(c) 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.

NEW SECTION. Sec. 16. DOMESTIC CORPORATIONS—NOTICE OF DUE DATE FOR PAYMENT OF ANNUAL LICENSE FEE AND FILING ANNUAL REPORT. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each domestic corporation, at its registered office within the state, by first class mail, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation shall fail to pay its annual license fee or to file its annual report it shall be dissolved and cease to exist. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title.

NEW SECTION. Sec. 17. FOREIGN CORPORATIONS—NOTICE OF DUE DATE FOR PAYMENT OF ANNUAL LICENSE FEE AND FILING ANNUAL REPORT. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each foreign

corporation qualified to do business in this state, by first class mail addressed to its registered office, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it shall fail to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title.

NEW SECTION. Sec. 18. DOMESTIC CORPORATIONS—FEE FOR FILING ARTICLES OF INCORPORATION AND FOR FIRST YEAR'S LICENSE. Every domestic corporation, except one for which existing law provides a different fee schedule, shall pay for filing of its articles of incorporation and its first year's license a fee of one hundred seventy-five dollars.

NEW SECTION. Sec. 19. DOMESTIC CORPORATIONS—ANNUAL LICENSE FEE. For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of fifty dollars.

NEW SECTION. Sec. 20. FOREIGN CORPORATIONS—FILING AND LICENSE FEES ON QUALIFICATION. A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall qualify so to do in the manner prescribed in this title and shall pay for the privilege of so doing the filing and license fees prescribed in this title for domestic corporations, including the same fees as are prescribed in section 18 of this act, for the filing of articles of incorporation of a domestic corporation.

NEW SECTION. Sec. 21. FOREIGN CORPORATIONS—ANNUAL LICENSE FEES. All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed by section 19 of this act for domestic corporations for annual license fees. All license fees shall be paid on or before the first day of July of each and every year or on the annual license expiration date as the secretary of state may establish under this title.

NEW SECTION. Sec. 22. LICENSE FEES FOR REINSTATED CORPORATION. (1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had

the corporation been in active status, plus a surcharge of twenty-five per cent, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration.

NEW SECTION. Sec. 23. PENALTY FOR NONPAYMENT OF ANNUAL LICENSE FEES AND FAILURE TO COMPLETE ANNUAL REPORT—PAYMENT OF DELINQUENT FEES. In the event any corporation, foreign or domestic, shall do business in this state without having paid its annual license fee or substantially completed its annual report when due, there shall become due and owing the state of Washington a penalty of twenty-five dollars.

A corporation organized under this title may at any time prior to its dissolution as provided in section 160 of this act, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in section 180 of this act, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty specified in this section.

NEW SECTION. Sec. 24. WAIVER OF PENALTY FEES. The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees and reinstate to full active status any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, that disproportionate harm would occur to the corporation if relief were not granted, and that relief would not be contrary to the public interest expressed in this title, the secretary may issue an order allowing relief from the penalty stating the basis for the relief and specifying any terms and conditions of the relief. If the secretary of state determines the request does not comply with the requirements for relief, the secretary shall issue an order denying the requested relief and stating the reasons for the denial.

Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. The secretary of state shall keep records of all requests for relief and the disposition of the requests. The secretary of state shall annually report to the legislature the number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests.

NEW SECTION. Sec. 25. **PUBLIC SERVICE COMPANIES ENTITLED TO DEDUCTIONS.** The annual fee required to be paid to the Washington utilities and transportation commission by any public service corporation shall be deducted from the annual license fee provided in this title and the excess only shall be collected.

It shall be the duty of the commission to furnish to the secretary of state on or before July 1st of each year a list of all public service corporations with the amount of annual license fees paid to the commission for the current year.

INCORPORATION

NEW SECTION. Sec. 26. **INCORPORATORS.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

NEW SECTION. Sec. 27. **ARTICLES OF INCORPORATION.** (1) The articles of incorporation must set forth:

- (a) A corporate name for the corporation that satisfies the requirements of section 37 of this act;
- (b) The number of shares the corporation is authorized to issue in accordance with sections 44 and 45 of this act;
- (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 section 40 of this act; and
- (d) The name and address of each incorporator in accordance with section 26 of this act.

(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 section 80 of this act.

(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 section 32 of this act;
- (b) A corporation has the purpose of engaging in any lawful business under section 33 of this act;
- (c) A corporation has perpetual existence and succession in its corporate name under section 34 of this act;

(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 section 34 of this act;

(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 sections 44 and 45 of this act;

(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 section 44 of this act;

(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 section 45 of this act;

(h) The board of directors must authorize any issuance of shares under section 49 of this act;

(i) Shares may be issued pro rata and without consideration to shareholders under section 51 of this act;

(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 section 51 of this act;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under section 52 of this act;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in section 57 of this act;

(m) Shares of a corporation acquired by it may be reissued under section 58 of this act;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under section 59 of this act;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under section 59 of this act;

(p) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under section 64 of this act;

(q) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under section 61 of this act;

(r) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under section 69 of this act;

(s) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under sections 73 and 75 of this act;

(t) Action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless this title requires a greater number of affirmative votes under section 73 of this act;

(u) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under section 74 of this act;

(v) Directors are elected by cumulative voting under section 76 of this act;

(w) Directors are elected by a plurality of votes cast by shares entitled to vote under section 76 of this act;

(x) A corporation must have a board of directors under section 80 of this act;

(y) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under section 80 of this act;

(z) The shareholders may remove one or more directors with or without cause under section 87 of this act;

(aa) A vacancy on the board of directors may be filled by the shareholders or the board of directors under section 89 of this act;

(bb) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under section 107 of this act;

(cc) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under section 109 of this act;

(dd) An officer of the corporation who is not a director is entitled to mandatory indemnification under section 107 of this act, and is entitled to apply for court-ordered indemnification under section 109 of this act, in each case to the same extent as a director under section 112 of this act;

(ee) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under section 112 of this act;

(ff) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract under section 112 of this act;

(gg) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder action under section 121 of this act;

(hh) Unless the title or the board of directors require a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under section 122 of this act;

(ii) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under section 129 of this act;

(jj) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under section 133 of this act;

(kk) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under section 138 of this act;

(ll) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under section 138 of this act;

(mm) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under section 139 of this act;

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under section 155 of this act; and

(oo) A corporation with fewer than three hundred holders of record of its shares does not require special approval of interested shareholder transactions under section 189 of this act.

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under section 54 of this act;

(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 section 61 of this act;

(c) A director need not be a resident of this state or a shareholder of the corporation under section 81 of this act;

(d) The board of directors may fix the compensation of directors under section 90 of this act;

(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 section 91 of this act;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under section 92 of this act;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under section 93 of this act;

(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 section 93 of this act;

(i) A quorum of a board of directors consists of a majority of the number of directors under section 95 of this act;

(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 section 95 of this act;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under section 96 of this act; 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 sections 105 through 113 of this act.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under section 83 of this act;

(g) The terms of directors may be staggered under section 85 of this act;

(h) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under section 44 of this act; and

(i) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under section 99 of this act.

(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 section 55 of this act;

(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 section 67 of this act; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under section 95 of this act.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.

NEW SECTION. Sec. 28. EFFECT OF FILING OF ARTICLES OF INCORPORATION. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily to dissolve the corporation.

NEW SECTION. Sec. 29. LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

NEW SECTION. Sec. 30. ORGANIZATION OF CORPORATION. (1) Within ninety days after the date on which the corporation's articles of incorporation were filed:

(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) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) Within thirty days after the date of its organizational meeting, the corporation shall file an initial report with the secretary of state containing the information described in section 187(1) of this act.

NEW SECTION. Sec. 31. BYLAWS. (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 section 80 of this act;

(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 the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under section 54 of this act;

(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 section 61 of this act;

(c) A director need not be a resident of this state or a shareholder of the corporation under section 81 of this act;

(d) The board of directors may fix the compensation of directors under section 90 of this act;

(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 section 91 of this act;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under section 92 of this act;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under section 93 of this act;

(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 section 93 of this act;

(i) A quorum of a board of directors consists of a majority of the number of directors under section 95 of this act;

(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 section 95 of this act;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under section 96 of this act; 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 sections 105 through 113 of this act under section 114 of this act.

(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 section 55 of this act;

(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 section 67 of this act; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under section 95 of this act.

NEW SECTION. Sec. 32. EMERGENCY BYLAWS. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

PURPOSES AND POWERS

NEW SECTION. Sec. 33. **PURPOSES.** (1) Every corporation incorporated under this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) Corporations organized for the purposes of banking or engaging in business as an insurer shall not be organized under this title.

NEW SECTION. Sec. 34. **GENERAL POWERS.** (1) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name.

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(a) To sue and be sued, complain, and defend in its corporate name;

(b) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(c) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To purchase, receive, subscribe for, or otherwise acquire; own; hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any person;

(g) To make contracts, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its

obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign corporation, partnership, association, joint venture or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;

(i) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(j) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(k) To conduct its business, locate offices, and exercise the powers granted by this title within or without this state;

(l) To elect, appoint, or hire officers, employees, and other agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(m) To fix the compensation of directors, and lend them money and credit;

(n) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(o) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(p) To transact any lawful business that will aid governmental policy; and

(q) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

NEW SECTION. Sec. 35. EMERGENCY POWERS. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the business affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. Sec. 36. ULTRA VIRES. (1) Except as provided in subsection (2) of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) In a proceeding by the attorney general under section 163 of this act.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, and may award damages for loss suffered by the corporation or another party because of enjoining or setting aside the unauthorized act.

NAME

NEW SECTION. Sec. 37. CORPORATE NAME. (1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.";

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by section 33 of this act and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under section 38 or 39 of this act;

(iii) The fictitious name adopted pursuant to section 174 of this act by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

NEW SECTION. Sec. 38. RESERVED NAME. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name adopted pursuant to section 174 of this act for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

NEW SECTION. Sec. 39. REGISTERED NAME. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 174 of this act, if the name is distinguishable upon the records of the secretary of state from the names specified in section 37(1) of this act.

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 174 of this act, by delivering to the secretary of state for filing an application that:

(a) Sets forth its corporate name, or its corporate name with any addition required by section 174 of this act, and the state or country and date of its incorporation; and

(b) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name, or consent in writing to the use of that name by a corporation thereafter incorporated under this title, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign corporation or limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the domestic limited partnership is formed, or the foreign corporation qualifies or consents to the qualification of another foreign corporation or limited partnership under the registered name.

OFFICE AND AGENT

NEW SECTION. Sec. 40. REGISTERED OFFICE AND REGISTERED AGENT. (1) Each corporation must continuously maintain in this state:

(a) A registered office that may be the same as any of its places of business. 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 the same city as the registered office in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent 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 filed with or as a part of the document first appointing a registered agent. In the event any individual 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.

NEW SECTION. Sec. 41. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. (1) A corporation 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 corporation;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with section 40(1)(a) of this act;

(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.

(2) 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 corporation for which the agent is the registered agent by notifying the corporation 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 (1) of this section and recites that the corporation has been notified of the change.

NEW SECTION. Sec. 42. RESIGNATION OF REGISTERED AGENT. (1) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The

statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the secretary of state shall mail a copy of the statement to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

NEW SECTION. Sec. 43. SERVICE ON CORPORATION. (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) The secretary of state shall be an agent of a corporation upon whom any such process, notice, or demand may be served if:

(a) The corporation fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at the corporation's principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

SHARES AND DISTRIBUTIONS

NEW SECTION. Sec. 44. AUTHORIZED SHARES. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation.

(b) Any of the designations, preferences, limitations, or relative rights of any class or series may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issuance of shares adopted by the board of directors pursuant to authority expressly vested in it by the corporation's articles of incorporation, if the manner in which such facts shall operate on the designations, preferences, limitations, or relative rights of such class or series is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors.

(c) All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 45 of this act.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (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, (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive.

NEW SECTION. Sec. 45. TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in section 45 of this act 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, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(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, 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, in the manner provided in subsection (4) of this section.

NEW SECTION. Sec. 46. ISSUED AND OUTSTANDING SHARES. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (4) of this section and to section 59 of this act.

(3) Redeemable shares are deemed to have been redeemed and not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(4) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

NEW SECTION. Sec. 47. FRACTIONAL SHARES. (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 section 53(2) of this act.

(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 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.

NEW SECTION. Sec. 48. SUBSCRIPTION FOR SHARES BEFORE INCORPORATION. (1) A written subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 49 of this act.

NEW SECTION. Sec. 49. ISSUANCE OF SHARES. (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 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.

NEW SECTION. Sec. 50. LIABILITY OF SHAREHOLDERS. 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 to be issued under section 49 of this act or specified in the subscription agreement under section 48 of this act.

NEW SECTION. Sec. 51. SHARE DIVIDENDS. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless (a) the articles of incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

NEW SECTION. Sec. 52. SHARE OPTIONS. Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or

warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

NEW SECTION. Sec. 53. FORM AND CONTENT OF CERTIFICATES. (1) Shares may but need not be represented by certificates. Unless this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information without charge on request in writing.

(4) Each share certificate (a) must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. Sec. 54. SHARES WITHOUT CERTIFICATES.

(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization 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 written statement of the information required on certificates by section 53 (2) and (3) of this act, and, if applicable, section 55 of this act.

NEW SECTION. Sec. 55. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (1) The articles of incorporation,

bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 54(2) of this act. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. Sec. 56. EXPENSE OF ISSUE. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

NEW SECTION. Sec. 57. SHAREHOLDERS' PREEMPTIVE RIGHTS. (1) Unless the articles of incorporation provide otherwise, and subject to the limitations in subsections (3) and (4) of this section, the shareholders of a corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) Unless the articles of incorporation provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) Unless the articles of incorporation provide otherwise, there is no preemptive right with respect to:

(a) Shares issued as compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(b) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(c) Shares issued pursuant to the corporation's initial plan of financing; and

(d) Shares sold otherwise than for money.

(4) Unless the articles of incorporation provide otherwise:

(a) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class; and

(b) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(5) Unless the articles of incorporation provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. Sec. 58. CORPORATION'S ACQUISITION OF ITS OWN SHARES. (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 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.

NEW SECTION. Sec. 59. DISTRIBUTIONS TO SHAREHOLDERS. (1) A board of directors may authorize 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 debts 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 (3)(b) 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 if payment occurs within one hundred

twenty days after the date of authorization, or the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(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.

SHAREHOLDERS

NEW SECTION. Sec. 60. ANNUAL MEETING. (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

NEW SECTION. Sec. 61. SPECIAL MEETING. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as set forth in subsections (2) and (3) of this section, if the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The right of shareholders of a public company to call a special meeting may be limited or denied to the extent provided in the articles of incorporation.

(3) If the corporation is other than a public company, the articles or bylaws may require the demand specified in subsection (1)(b) of this section be made by a greater percentage, not in excess of twenty-five percent, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.

(4) If not otherwise fixed under section 62 or 66 of this act, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(5) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is

stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(6) Only business within the purpose or purposes described in the meeting notice required by section 64(3) of this act may be conducted at a special shareholders' meeting.

NEW SECTION. Sec. 62. COURT-ORDERED MEETING. (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

(b) On application of a shareholder who signed a demand for a special meeting valid under section 61 of this act, 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 those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

NEW SECTION. Sec. 63. ACTION WITHOUT MEETING. (1) Action required or permitted by this title to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under section 62 or 66 of this act, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section.

(3) A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that all consents are in possession of the corporation.

(4) Action taken under this section is effective when all consents are in possession of the corporation, unless the consent specifies a later effective date.

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this title requires that notice of proposed action be given to non-voting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this title, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to such shareholders for action.

NEW SECTION. Sec. 64. NOTICE OF MEETING. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no fewer than ten nor more than sixty days before the meeting date, except that notice of a shareholders' meeting to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed sale of assets pursuant to section 139 of this act, or the dissolution of the corporation shall be given no fewer than twenty nor more than sixty days before the meeting date. Unless this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this title or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 66 of this act, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

NEW SECTION. Sec. 65. WAIVER OF NOTICE. (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. Except as provided by subsections (2) and (3) of this section, the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(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.

NEW SECTION. Sec. 66. RECORD DATE. (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 any other 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 section 62 of this act, 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.

(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.

NEW SECTION. Sec. 67. SHAREHOLDER PARTICIPATION BY MEANS OF COMMUNICATION EQUIPMENT. If the articles of incorporation or bylaws so provide, shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

NEW SECTION. Sec. 68. SHAREHOLDERS' LIST FOR MEETING. (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 section 183(3) of this act.

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

NEW SECTION. Sec. 69. VOTING ENTITLEMENT OF SHARES. (1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

NEW SECTION. Sec. 70. PROXIES. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact or agent.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy is revocable by the shareholder unless the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under section 78 of this act.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 72 of this act and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NEW SECTION. Sec. 71. SHARES HELD BY NOMINEES. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

- (2) The procedure may set forth:
 - (a) The types of nominees to which it applies;
 - (b) The rights or privileges that the corporation recognizes in a beneficial owner;
 - (c) The manner in which the procedure is selected by the nominee;
 - (d) The information that must be provided when the procedure is selected;
 - (e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

NEW SECTION. Sec. 72. CORPORATION'S ACCEPTANCE OF VOTES. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

NEW SECTION. Sec. 73. QUORUM AND VOTING REQUIREMENTS. (1) Shares entitled to vote as a separate voting group may take

action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(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, 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 action exceed the votes cast within the voting group opposing the 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 section 75 of this act.

(5) The election of directors is governed by section 76 of this act.

NEW SECTION. Sec. 74. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS. (1) If the articles of incorporation or this title provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 73 of this act.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 73 of this act. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

NEW SECTION. Sec. 75. GREATER OR LESSER QUORUM OR VOTING REQUIREMENTS. (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 sections 122, 133, 139, and 155 of this act, 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) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

NEW SECTION. Sec. 76. VOTING FOR DIRECTORS—CUMULATIVE VOTING. (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, 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.

NEW SECTION. Sec. 77. VOTING TRUSTS. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each owner of a beneficial interest transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid only until the earlier of ten years from the date the first shareholder signs the extension agreement or the date of expiration of the extension. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

NEW SECTION. Sec. 78. VOTING AGREEMENTS. (1) Two or more shareholders may provide for the manner in which they will vote their

shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 77 of this act.

(2) A voting agreement created under this section is specifically enforceable.

NEW SECTION. Sec. 79. PROCEDURE IN DERIVATIVE PROCEEDINGS. (1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner.

DIRECTORS AND OFFICERS

NEW SECTION. Sec. 80. REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS. (1) Except as provided in subsection (3) of this section, each corporation must have a board of directors.

(2) All corporate powers shall 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, subject to any limitation set forth in the articles of incorporation.

(3) A corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation who will perform some or all of the duties of the board of directors.

NEW SECTION. Sec. 81. QUALIFICATIONS OF DIRECTORS.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

NEW SECTION. Sec. 82. NUMBER AND ELECTION OF DIRECTORS. (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 their terms are staggered under section 85 of this act.

NEW SECTION. Sec. 83. ELECTION OF DIRECTORS BY CERTAIN CLASSES OR SERIES OF SHARES. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class, or classes, or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

NEW SECTION. Sec. 84. TERMS OF DIRECTORS GENERALLY. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 85 of this act.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or until there is a decrease in the number of directors.

NEW SECTION. Sec. 85. STAGGERED TERMS FOR DIRECTORS. (1) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If cumulative voting is authorized, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting.

NEW SECTION. Sec. 86. RESIGNATION OF DIRECTORS. (1) A director may resign at any time by delivering written notice to the board of directors, its chairperson, the president, or the secretary.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

NEW SECTION. Sec. 87. REMOVAL OF DIRECTORS BY SHAREHOLDERS. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

NEW SECTION. Sec. 88. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING. (1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

NEW SECTION. Sec. 89. VACANCY ON BOARD OF DIRECTORS. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (a) The shareholders may fill the vacancy;
- (b) The board of directors may fill the vacancy; or

(c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares are entitled to vote to fill the vacancy.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 86(2) of this act or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

NEW SECTION. Sec. 90. COMPENSATION OF DIRECTORS. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

NEW SECTION. Sec. 91. MEETINGS AND ACTION OF THE BOARD. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

NEW SECTION. Sec. 92. ACTION WITHOUT MEETING. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this title to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director either before or after the action taken, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

NEW SECTION. Sec. 93. NOTICE OF MEETING. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, 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. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

NEW SECTION. Sec. 94. WAIVER OF NOTICE. (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 in writing, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(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 action taken at the meeting.

NEW SECTION. Sec. 95. QUORUM AND VOTING. (1) Unless the articles of incorporation or bylaws require a greater 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) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or specified number of directors determined under subsection (1) of this section.

(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 action is taken is deemed to have assented to the 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 the action taken is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention 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 action taken.

NEW SECTION. Sec. 96. COMMITTEES. (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 is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under section 95 of this act.

(3) Sections 91 through 95 of this act, which govern meetings, 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 section 80 of this act.

(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 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 section 121 of this act;

(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 action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 97 of this act.

NEW SECTION. Sec. 97. GENERAL STANDARDS FOR DIRECTORS. (1) A director shall discharge the duties of a director, including duties as member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

NEW SECTION. Sec. 98. LIABILITY FOR UNLAWFUL DISTRIBUTIONS. (1) A director who votes for or assents to a distribution made in violation of section 59 of this act or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 59 of this act or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 97 of this act. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section 59 of this act or the articles of incorporation.

(3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution was measured under section 59(4) of this act.

NEW SECTION. Sec. 99. LIMITATION ON LIABILITY OF DIRECTORS. The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating section 98 of this act, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

NEW SECTION. Sec. 100. OFFICERS. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

NEW SECTION. Sec. 101. DUTIES OF OFFICERS. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers.

NEW SECTION. Sec. 102. STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the officer's duties, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.

NEW SECTION. Sec. 103. RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

(2) A board of directors may remove any officer at any time with or without cause. An officer or assistant officer, if appointed by another officer, may be removed by any officer authorized to appoint officers or assistant officers.

NEW SECTION. Sec. 104. CONTRACT RIGHTS OF OFFICERS. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

NEW SECTION. Sec. 105. INDEMNIFICATION DEFINITIONS. For purposes of sections 106 through 115 of this act:

(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 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 section 112 of this act, 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.

NEW SECTION. Sec. 106. AUTHORITY TO INDEMNIFY. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The individual acted in good faith; and

(b) The individual reasonably believed:

(i) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and

(ii) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

NEW SECTION. Sec. 107. **MANDATORY INDEMNIFICATION.** Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

NEW SECTION. Sec. 108. **ADVANCE FOR EXPENSES.** (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 106 of this act; and

(b) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorization of payments under this section may be made by provision in the articles of incorporation or bylaws, by resolution adopted by the shareholders or board of directors, or by contract.

NEW SECTION. Sec. 109. COURT-ORDERED INDEMNIFICATION. Unless a corporation's articles of incorporation provide otherwise, a director of a corporation who is a party to a proceeding may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification or advance of expenses if it determines:

(1) The director is entitled to mandatory indemnification under section 107 of this act, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification;

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 106 of this act or was adjudged liable as described in section 106(4) of this act, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred unless the articles of incorporation or a bylaw, contract, or resolution approved or ratified by the shareholders pursuant to section 111 of this act provides otherwise; or

(3) In the case of an advance of expenses, the director is entitled pursuant to the articles of incorporation, bylaws, or any applicable resolution or contract, to payment or reimbursement of the director's reasonable expenses incurred as a party to the proceeding in advance of final disposition of the proceeding.

NEW SECTION. Sec. 110. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION. (1) A corporation may not indemnify a director under section 106 of this act unless authorized 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 section 106 of this act.

(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 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 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.

NEW SECTION. Sec. 111. SHAREHOLDER AUTHORIZED INDEMNIFICATION AND ADVANCEMENT OF EXPENSES. (1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in sections 106 through 110 of this act, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of section 98 of this act; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any indemnity or advance of expenses under subsection (1) of this section shall be made in accordance with section 110 of this act.

NEW SECTION. Sec. 112. INDEMNIFICATION OF OFFICERS, EMPLOYEES AND AGENTS. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under section 107 of this act, and is entitled to apply for court-ordered indemnification under section 109 of this act, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under sections 106 through 111 of this act to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

NEW SECTION. Sec. 113. **INSURANCE.** A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation 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, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under section 106 or 107 of this act.

NEW SECTION. Sec. 114. **APPLICATION OF SECTIONS 105 THROUGH 113 OF THIS ACT.** (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with sections 105 through 113 of this act. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) Sections 105 through 113 of this act do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

NEW SECTION. Sec. 115. **REPORT TO SHAREHOLDERS.** If a corporation indemnifies or advances expenses to a director under sections 106, 107, 108, 109, or 111 of this act in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

NEW SECTION. Sec. 116. **DEFINITIONS FOR SECTIONS 117 THROUGH 119 OF THIS ACT.** For purposes of sections 117 through 119 of this act:

(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 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.

NEW SECTION. Sec. 117. JUDICIAL ACTION. (1) A transaction effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with section 118 of this act;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with section 119 of this act; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

NEW SECTION. Sec. 118. DIRECTORS' ACTION. (1) Directors' action respecting a transaction is effective for purposes of section 117(2)(a) of this act if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in section 116(3)(a) of this act is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in section 116(4)(b) of this act, then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction, or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

NEW SECTION. Sec. 119. SHAREHOLDERS' ACTION. (1) Shareholders' action respecting a transaction is effective for purposes of section 117(2)(b) of this act if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director, or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that the director's failure

did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting section 117(2)(c) of this act, take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances.

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

NEW SECTION. Sec. 120. AUTHORITY TO AMEND ARTICLES OF INCORPORATION. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

NEW SECTION. Sec. 121. AMENDMENT OF ARTICLES OF INCORPORATION BY BOARD OF DIRECTORS. 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:

(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 change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder action.

NEW SECTION. Sec. 122. AMENDMENT OF ARTICLES OF INCORPORATION BY BOARD OF DIRECTORS AND SHAREHOLDERS. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment 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 amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 62 of this act. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by each voting group entitled to vote thereon 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. The articles of incorporation of a corporation other than a public company may provide for a lesser vote than that provided for in this subsection, 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 amendment is not less than a majority of all the votes entitled to be cast on the amendment by that voting group.

NEW SECTION. Sec. 123. VOTING ON AMENDMENTS TO ARTICLES OF INCORPORATION BY VOTING GROUPS. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this title, on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares within a class to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series within the class so affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

NEW SECTION. Sec. 124. AMENDMENT OF ARTICLES OF INCORPORATION BEFORE ISSUANCE OF SHARES. If a corporation has not yet issued shares, its board of directors, or incorporators if initial directors were not named in the articles of incorporation and have not been elected, may adopt one or more amendments to the corporation's articles of incorporation.

NEW SECTION. Sec. 125. ARTICLES OF AMENDMENT. 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, a statement to that effect and that shareholder action was not required; and

(6) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of sections 122 and 123 of this act.

NEW SECTION. Sec. 126. **RESTATED ARTICLES OF INCORPORATION.** (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 section 122 of this act.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 64 of this act. 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; or

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by section 125 of this act.

(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.

NEW SECTION. Sec. 127. **AMENDMENT OF ARTICLES OF INCORPORATION PURSUANT TO REORGANIZATION.** (1) A corporation's articles of incorporation may be amended without action 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 section 27 of this act.

(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.

NEW SECTION. Sec. 128. EFFECT OF AMENDMENT OF ARTICLES OF INCORPORATION. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

NEW SECTION. Sec. 129. AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR SHAREHOLDERS. (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 or 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.

NEW SECTION. Sec. 130. BYLAW INCREASING QUORUM OR VOTING REQUIREMENTS FOR DIRECTORS. (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 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 by the vote required to take action under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, action 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 by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

MERGER AND SHARE EXCHANGE

NEW SECTION. Sec. 131. MERGER. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 133 of this act, approve a plan of merger.

(2) The plan of merger must set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

NEW SECTION. Sec. 132. SHARE EXCHANGE. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 133 of this act, approve the exchange.

(2) The plan of exchange must set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange;

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

NEW SECTION. Sec. 133. ACTION ON PLAN OF MERGER OR SHARE EXCHANGE. (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.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 64 of this act. 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 contain or be accompanied by a copy or summary of the plan.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of merger to be authorized must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, 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 of merger is not less than a majority of all the votes entitled to be cast on the plan of merger by that voting group. Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 123 of this act.

(6) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of share exchange to be authorized must be approved by each voting group entitled to vote separately on the

plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, 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 of share exchange is not less than a majority of all the votes entitled to be cast on the plan of share exchange by that voting group. Separate voting by voting groups is required on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action 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 section 121 of this act, 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, 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, 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.

NEW SECTION. Sec. 134. MERGER OF SUBSIDIARY. (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 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, the parent shall mail a copy of the plan of merger to each shareholder of the subsidiary.

(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 section 121 of this act.

NEW SECTION. Sec. 135. **ARTICLES OF MERGER OR SHARE EXCHANGE.** After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) The plan of merger or share exchange;

(2) If shareholder approval was not required, a statement to that effect;

or

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was duly approved by the shareholders pursuant to section 133 of this act.

NEW SECTION. Sec. 136. **EFFECT OF MERGER OR SHARE EXCHANGE.** (1) When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under sections 140 through 153 of this act.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under sections 140 through 153 of this act.

NEW SECTION. Sec. 137. MERGER OR SHARE EXCHANGE WITH FOREIGN CORPORATION. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with section 135 of this act if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of sections 131 through 134 of this act and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 135 of this act.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange 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 of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under sections 140 through 153 of this act.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

SALE OF ASSETS

NEW SECTION. Sec. 138. SALE OF ASSETS IN REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section.

NEW SECTION. Sec. 139. SALE OF ASSETS OTHER THAN IN THE REGULAR COURSE OF BUSINESS. (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:

(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.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 64 of this act. 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) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by two-thirds of all the votes entitled to be cast on the transaction. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, 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 transaction is not less than a majority of all the votes entitled to be cast on the transaction by that voting group.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution is governed by section 59 of this act and not by this section.

DISSENTERS' RIGHTS

NEW SECTION. Sec. 140. DEFINITIONS FOR SECTIONS 140 THROUGH 153 OF THIS ACT. As used in this chapter:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 141 of this act and who exercises that right when and in the manner required by sections 143 through 151 of this act.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record 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.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

NEW SECTION. Sec. 141. RIGHT TO DISSENT. (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 section 133 of this act 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 section 134 of this act;

(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 that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 47 of this act; 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, 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.

NEW SECTION. Sec. 142. DISSENT BY NOMINEES AND BENEFICIAL OWNERS. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the dissenter dissents and the dissenter's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

- (a) The beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and
- (b) The beneficial shareholder does so with respect to all shares of which such shareholder is the beneficial shareholder or over which such shareholder has power to direct the vote.

NEW SECTION. Sec. 143. NOTICE OF DISSENTERS' RIGHTS. (1) If proposed corporate action creating dissenters' rights under section

141 of this act is submitted to 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 section 141 of this act is taken without a vote of shareholders, the corporation, within ten days after effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 145 of this act.

NEW SECTION. Sec. 144. NOTICE OF INTENT TO DEMAND PAYMENT. (1) If proposed corporate action creating dissenters' rights under section 141 of this act 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 written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effected, and (b) not vote such shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment for the shareholder's shares under this chapter.

NEW SECTION. Sec. 145. DISSENTERS' NOTICE. (1) If proposed corporate action creating dissenters' rights under section 141 of this act is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 144 of this act.

(2) The dissenters' notice 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) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

NEW SECTION. Sec. 146. DUTY TO DEMAND PAYMENT. (1) A shareholder sent a dissenters' notice described in section 145 of this act must demand payment, certify whether the shareholder acquired beneficial

ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 145(2)(c) of this act, and deposit the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter.

NEW SECTION. Sec. 147. SHARE RESTRICTIONS. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is effected or the restriction is released under section 149 of this act.

(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.

NEW SECTION. Sec. 148. PAYMENT. (1) Except as provided in section 150 of this act, within thirty days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with section 146 of this act the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) An explanation of how the corporation estimated the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under section 151 of this act; and

(e) A copy of this chapter.

NEW SECTION. Sec. 149. FAILURE TO TAKE ACTION. (1) If the corporation does not effect the proposed 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 the proposed action, it must send a new dissenters' notice under section 145 of this act and repeat the payment demand procedure.

NEW SECTION. Sec. 150. AFTER-ACQUIRED SHARES. (1) A corporation may elect to withhold payment required by section 148 of this act 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 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 section 151 of this act.

NEW SECTION. Sec. 151. PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER. (1) A dissenter may notify the corporation in writing 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 section 148 of this act, or reject the corporation's offer under section 150 of this act 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 section 148 of this act or offered under section 150 of this act 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 section 148 of this act within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed 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 in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares.

NEW SECTION. Sec. 152. COURT ACTION. (1) If a demand for payment under section 151 of this act remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this

state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation 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 shares 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 corporation may join as a party to the proceeding any shareholder who claims to be a dissenter but who has not, in the opinion of the corporation, complied with the provisions of this chapter. If the court determines that such shareholder has not complied with the provisions of this chapter, the shareholder shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision 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 (a) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation, or (b) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 150 of this act.

NEW SECTION. Sec. 153. COURT COSTS AND COUNSEL FEES. (1) The court in a proceeding commenced under section 152 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 corporation, 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 under section 151 of this act.

(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 corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 143 through 151 of this act; or

(b) Against either the corporation 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 sections 140 through 153 of this act.

(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 corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

DISSOLUTION

NEW SECTION. Sec. 154. DISSOLUTION BY INITIAL DIRECTORS OR INCORPORATORS. A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that either has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing:

(1) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(2) Articles of dissolution that set forth:

(a) The name of the corporation;

(b) The date of its incorporation;

(c) Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;

(d) That no debt of the corporation remains unpaid;

(e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(f) That a majority of the initial directors authorized the dissolution, or that initial directors were not named in the articles of incorporation and have not been elected and a majority of incorporators authorized the dissolution.

NEW SECTION. Sec. 155. DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(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.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 64 of this act. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by two-thirds of all the votes entitled to be cast on that proposal in order to be adopted. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, 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 proposal to dissolve is not less than a majority of all the votes entitled to be cast on the proposal by that voting group.

NEW SECTION. Sec. 156. ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, 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; and

(iii) If shareholder approval was required for dissolution, a statement that dissolution was duly approved by the shareholders in accordance with section 155 of this act.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

NEW SECTION. Sec. 157. REVOCATION OF DISSOLUTION. (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, 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 section 37 of this act; 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;

(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 was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with sections 157(2) and 155 of this act.

(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.

NEW SECTION. Sec. 158. EFFECT OF DISSOLUTION. (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 not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) 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) 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 sections 80 through 119 of this act;

(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.

NEW SECTION. Sec. 159. KNOWN CLAIMS AGAINST A DISSOLVED CORPORATION. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. Sec. 160. **GROUND FOR ADMINISTRATIVE DISSOLUTION.** The secretary of state may commence a proceeding under section 161 of this act to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty days after they are due any license fees or penalties imposed by this title;

(2) The corporation does not deliver its completed annual report to the secretary of state within sixty days after it is due;

(3) The corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

NEW SECTION. Sec. 161. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION. (1) If the secretary of state determines that one or more grounds exist under section 160 of this act for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first class mail, postage prepaid.

(2) If the corporation 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 within sixty days after notice is effective, the secretary of state shall administratively dissolve the corporation and give the corporation written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 158 of this act and notify claimants under section 159 of this act.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

NEW SECTION. Sec. 162. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION. (1) A corporation administratively dissolved under section 161 of this act may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of section 37 of this act.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

NEW SECTION. Sec. 163. GROUNDS FOR JUDICIAL DISSOLUTION. The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment was returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

NEW SECTION. Sec. 164. PROCEDURE FOR JUDICIAL DISSOLUTION. (1) Venue for any proceeding to dissolve a corporation brought by any party named in section 163 of this act lies in the county where a corporation's registered office is or was last located.

(2) It is not necessary to make shareholders or directors parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

NEW SECTION. Sec. 165. RECEIVERSHIP OR CUSTODIANSHIP. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court, during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the corporation or proceeds from the sale of the assets.

NEW SECTION. Sec. 166. DECREE OF DISSOLUTION. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 163 of this act exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 158 of this act and the notification of claimants in accordance with section 159 of this act.

NEW SECTION. Sec. 167. SURVIVAL OF REMEDY AFTER DISSOLUTION. The dissolution of a corporation either: (1) By the issuance of a certificate of dissolution by the secretary of state, (2) by a decree of court, or (3) by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. The directors of any such corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders. Any such action or proceeding by or against the corporation may be prosecuted or

defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

NEW SECTION. Sec. 168. **DEPOSIT WITH STATE TREASURER.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer for safekeeping. If assets are transferred to the state treasurer, and if the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay such person or such person's representative that amount.

FOREIGN CORPORATIONS

NEW SECTION. Sec. 169. **AUTHORITY TO TRANSACT BUSINESS REQUIRED.** (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state.

(3) The list of activities in subsection (2) of this act is not exhaustive.

NEW SECTION. Sec. 170. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

NEW SECTION. Sec. 171. APPLICATION FOR CERTIFICATE OF AUTHORITY. (1) A foreign corporation may 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) That the name of the foreign corporation meets the requirements stated in section 174 of this act;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office, in accordance with section 175 of this act; and

(f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, issued no more than sixty days before the date of the application and duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

NEW SECTION. Sec. 172. AMENDED CERTIFICATE OF AUTHORITY. (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

- (a) Its corporate name; or
- (b) The period of its duration.

(2) The requirements of section 171 of this act for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

NEW SECTION. Sec. 173. EFFECT OF CERTIFICATE OF AUTHORITY. (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this title.

(2) A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation of like character. Except as otherwise provided by this title, a foreign corporation is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(3) Except as otherwise provided in sections 202 through 205 of this act, this title does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

NEW SECTION. Sec. 174. CORPORATE NAME OF FOREIGN CORPORATION. (1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.;"

(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 33 of this act and its articles of incorporation;

(c) Does not contain any of the following words or phrases: "bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (3) and (4) of this section, is distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under section 38 or 39 of this act;

(iii) The fictitious name adopted pursuant to subsection (2) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," to its corporate name for use in this state; or

(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(3) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of

subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under section 172 of this act.

NEW SECTION. Sec. 175. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION. (1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of 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, 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 the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent 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 filed with or as a part of the document first appointing a registered agent. In the event any individual 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.

NEW SECTION. Sec. 176. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state 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) Its name;

(b) If the current registered office is to be changed, the street address of its new registered office;

(c) If the current registered agent is to be changed, the name of its 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.

(2) 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 corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

NEW SECTION. Sec. 177. RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail a copy of the statement to the foreign corporation at its principal office address shown in its most recent annual report, or in the application for certificate of authority if no annual report has been filed.

(3) 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.

NEW SECTION. Sec. 178. SERVICE ON FOREIGN CORPORATION. (1) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) The secretary of state shall be an agent of a foreign corporation upon whom any process, notice, or demand may be served, if:

(a) The corporation is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;

(b) The corporation's authority to transact business in this state has been revoked under section 181 of this act; or

(c) The corporation has been authorized to transact business in this state and has withdrawn under section 179 of this act.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state,

or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at its principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

NEW SECTION. Sec. 179. WITHDRAWAL OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260, and must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under (c) of this subsection; and

(e) A commitment to notify the secretary of state in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under section 178 of this act is service on the foreign corporation.

NEW SECTION. Sec. 180. GROUNDS FOR REVOCATION. The secretary of state may commence a proceeding under section 181 of this act to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its completed annual report to the secretary of state within sixty days after it is due;

(2) The foreign corporation does not pay within sixty days after they are due any fees or penalties imposed by this title;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The foreign corporation does not inform the secretary of state under section 176 or 177 of this act that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

NEW SECTION. Sec. 181. PROCEDURE FOR AND EFFECT OF REVOCATION. (1) If the secretary of state determines that one or more grounds exist under section 180 of this act for revocation of a certificate of authority, the secretary of state shall give the foreign corporation written notice of the determination by first class mail, postage prepaid.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under section 178 of this act is service on the foreign corporation.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

RECORDS AND REPORTS

NEW SECTION. Sec. 182. CORPORATE RECORDS. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken 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 by shareholders without a meeting, for the past three years;

(d) The financial statements described in section 186(1) of this act, for the past three years;

(e) All written communications 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 most recent annual report delivered to the secretary of state under section 187 of this act.

NEW SECTION. Sec. 183. INSPECTION OF RECORDS BY SHAREHOLDERS. (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 section 182(5) of this act if the shareholder gives the corporation written 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 written 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 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 by the shareholders or board of directors 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 section 68 of this act 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.

NEW SECTION. Sec. 184. SCOPE OF INSPECTION RIGHT. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under section 184 of this act includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means, including copies in electronic or other nonwritten form if the shareholder so requests.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any records provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 183(2)(c) of this act by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

NEW SECTION. Sec. 185. COURT-ORDERED INSPECTION. (1) If a corporation does not allow a shareholder who complies with section

183(1) of this act to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with section 183(2) and (3) of this act may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

NEW SECTION. Sec. 186. FINANCIAL STATEMENTS FOR SHAREHOLDERS. (1) Not later than four months after the close of each fiscal year, and in any event prior to the annual meeting of shareholders, each corporation shall prepare (a) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year, and (b) an income statement showing the results of its operation during its fiscal year. Such statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate. If financial statements are prepared by the corporation for any purpose on the basis of generally accepted accounting principles, the annual statements must also be prepared, and disclose that they are prepared, on that basis. If financial statements are prepared only on a basis other than generally accepted accounting principles, they must be prepared, and disclose that they are prepared, on the same basis as other reports and statements prepared by the corporation for the use of others.

(2) Upon written request, the corporation shall promptly mail to any shareholder a copy of the most recent balance sheet and income statement. If prepared for other purposes, the corporation shall also furnish upon written request a statement of sources and applications of funds, and a statement of changes in shareholders' equity, for the most recent fiscal year.

(3) If the annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the

statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the basis used for statements prepared for the preceding year.

(4) 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.

NEW SECTION. Sec. 187. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(d) The address of the principal place of business of the corporation in this state;

(e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to section 80(3) of this act or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;

(f) A brief description of the nature of its business; and

(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) A corporation's first annual report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual license fee, and at such additional times as the corporation elects.

MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 188. APPLICATION TO EXISTING CORPORATIONS. (1) Unless otherwise provided, this title applies to all domestic corporations in existence on the effective date of this act that were incorporated under any general statute of this state providing for incorporation of corporations for profit.

(2) Unless otherwise provided, a foreign corporation authorized to transact business in this state on the effective date of this act is subject to this title but is not required to obtain a new certificate of authority to transact business under this title.

NEW SECTION. Sec. 189. TRANSACTIONS INVOLVING INTERESTED SHAREHOLDERS. (1) For purposes of this section:

(a) An interested shareholder transaction means any transaction between a corporation, or any subsidiary thereof, and an interested shareholder of such corporation or an affiliated person of an interested shareholder that must be authorized pursuant to the provisions of sections 131 through 137 and 154 through 168, or 139 of this act;

(b) An interested shareholder:

(i) Includes any person or group of affiliated persons who beneficially own twenty percent or more of the outstanding voting shares of a corporation. An affiliated person is any person who either acts jointly or in concert with, or directly or indirectly controls, is controlled by, or is under common control with another person; and

(ii) Excludes any person who, in good faith and not for the purpose of circumventing this section, is an agent, bank, broker, nominee, or trustee for another person, if such other person is not an interested shareholder under (b)(i) of this subsection.

(2) Except as provided in subsection (3) of this section, an interested shareholder transaction must be approved by each voting group entitled to vote separately on the transaction by two-thirds of the votes entitled to be counted under this subsection for that voting group. 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 owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) This section shall not apply to a transaction:

(a) Unless the articles of incorporation provide otherwise, by a corporation with fewer than three hundred holders of record of its shares;

(b) Approved by a majority vote of the corporation's board of directors. For such purpose, the votes of directors who are directors or officers of,

or have a material financial interest in an interested shareholder, or who were nominated for election as a director as a result of an arrangement with an interested shareholder and first elected as a director within twenty-four months of the proposed transaction, shall not be counted in determining whether the transaction is approved by such directors;

(c) In which a majority of directors whose votes are entitled to be counted under (3)(b) of this section determines that the fair market value of the consideration to be received by noninterested shareholders for shares of any class of which shares are owned by any interested shareholder is not less than the highest fair market value of the consideration paid by any interested shareholder in acquiring shares of the same class within twenty-four months of the proposed transaction; or

(d) By a corporation whose original articles of incorporation have a provision, or whose shareholders adopt an amendment to the articles of incorporation by two-thirds of the votes entitled to be counted under this subsection, expressly electing not to be covered by this section. 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 owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have voted to approve the amendment. The votes of shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining whether the amendment is approved under other sections of this title and for purposes of determining a quorum.

(4) The requirements imposed by this section are in addition to, and not in lieu of, requirements imposed on any transaction by any other provision in this title, the articles of incorporation, or the bylaws of the corporation, or otherwise.

NEW SECTION. Sec. 190. LIMITATION ON LIABILITY OF DIRECTORS—INDEMNIFICATION. The provisions of sections 99 and 105 through 115 of this act shall apply to any corporation, other than a municipal corporation, incorporated under the laws of the state of Washington.

NONADMITTED ORGANIZATIONS

NEW SECTION. Sec. 191. NONADMITTED ORGANIZATIONS MAY OWN AND ENFORCE NOTES SECURED BY REAL ESTATE MORTGAGES. Any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association, or other corporation or association organized and existing under the laws of the United States or under the laws of any state or territory of the United States other than the state of Washington, including, without restriction of the generality of the foregoing description, employee pension fund organizations, charitable foundations, trust funds, or other funds, foundations or

trusts engaged in the investment of moneys, and trustees of such organizations, foundations, funds or trusts, and which are not admitted to conduct business in the state of Washington under the provisions of this title, and which are not otherwise specifically authorized to transact business in this state, herein collectively referred to as "nonadmitted organizations," may purchase, acquire, hold, sell, assign, transfer, and enforce notes secured by real estate mortgages covering real property situated in this state and the security interests thereby provided, and may make commitments to purchase or acquire such notes so secured.

NEW SECTION. Sec. 192. **NONADMITTED ORGANIZATIONS MAY FORECLOSE MORTGAGES.** Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by section 175 of this act for foreign corporations doing business in this state.

NEW SECTION. Sec. 193. **BY ENGAGING IN CERTAIN ACTIVITIES, NONADMITTED ORGANIZATIONS ARE NOT TRANSACTING BUSINESS.** The activities authorized by sections 191 and 192 of this act by such nonadmitted organizations shall not constitute "transacting business" within the meaning of sections 169 through 181 of this act.

NEW SECTION. Sec. 194. **SERVICE OF PROCESS.** In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be had by serving the secretary of state of the state of Washington.

NEW SECTION. Sec. 195. **PROCEDURE FOR SERVICE OF PROCESS.** Duplicate copies of legal process against said nonadmitted organizations shall be served upon the secretary of state by registered mail. At the time of service the plaintiff shall pay to the secretary of state twenty-five dollars taxable as costs in the action and shall also furnish the secretary of state the home office address of said nonadmitted organization. The secretary of state shall forthwith send one of the copies of process by certified mail to the said nonadmitted organization to its home office. The secretary of state shall keep a record of the day, month, and year of service upon the secretary of state of all legal process. No proceedings shall be had against the nonadmitted organization nor shall it be required to appear, plead, or

answer until the expiration of forty days after the date of service upon the secretary of state.

NEW SECTION. Sec. 196. VENUE. Suit upon causes of action arising against the said nonadmitted organizations shall be brought in the county where the property is situated which is the subject of the mortgage purchased by the said nonadmitted organizations. If the property covered by the said mortgage is situated in more than one county, venue may be had in any of said counties where the property lies.

SIGNIFICANT BUSINESS TRANSACTIONS

NEW SECTION. Sec. 197. LEGISLATIVE FINDINGS—INTENT. The legislature finds that:

(1) Corporations that offer employment and health, retirement, and other benefits to citizens of the state of Washington are vital to the economy of this state and the well-being of all of its citizens;

(2) The welfare of the employees of these corporations is of paramount interest and concern to this state;

(3) Many businesses in this state rely on these corporations to purchase goods and services;

(4) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can cause corporate management to dissipate a corporation's assets in an effort to resist the takeover by selling or distributing cash or assets, redeeming stock, or taking other steps to increase the short-term gain to shareholders and to dissipate energies required for strategic planning, market development, capital investment decisions, assessment of technologies, and evaluation of competitive challenges that can damage the long-term interests of shareholders and the economic health of the state by reducing or eliminating the ability to finance investments in research and development, new products, facilities and equipment, and by undermining the planning process for those purposes;

(5) Hostile or unfriendly attempts to gain control or influence otherwise publicly held corporations are often highly leveraged pursuant to financing arrangements which assume that an acquirer will promptly obtain access to an acquired corporation's cash or assets and use them, or the proceeds of their sale, to repay acquisition indebtedness;

(6) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can harm the economy of the state by weakening corporate performance, and causing unemployment, plant closings, reduced charitable donations, declining population base, reduced income to fee-supported local government services, reduced tax base, and reduced income to other businesses; and

(7) The state has a substantial and legitimate interest in regulating domestic corporations and those foreign corporations that have their most

significant business contacts with this state and in regulating hostile or unfriendly attempts to gain control of or influence otherwise publicly held domestic corporations and those foreign corporations that employ a large number of citizens of the state, pay significant taxes, and have a substantial economic base in the state.

The legislature intends this chapter to balance the substantial and legitimate interests of the state in domestic corporations and those foreign corporations that employ a large number of citizens of the state and that have a substantial economic base in the state with: The interests of citizens of other states who own shares of such corporations; the interests of the state of incorporation of such foreign corporations in regulating the internal affairs of corporations incorporated in that state; and the interests of promoting interstate commerce. To this effect, the legislature intends to regulate certain transactions between publicly held corporations and acquiring persons that will tend to harm the long-term health of domestic corporations and of foreign corporations that have their principal executive office and a majority of their assets in this state and that employ a large number of citizens of this state.

NEW SECTION. Sec. 198. CHAPTER DEFINITIONS. The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially owns ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; or (c) exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) if having the same residence as a person, the person's relative, spouse, or spouse's relative.

(4) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(5) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(6) "Exchange act" means the federal securities exchange act of 1934, as amended.

(7) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(8) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(9) "Significant business transaction" means:

(a) A merger or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition date. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption may be rebutted by clear and convincing evidence. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions

permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The adoption of a plan or proposal for the sale of assets, liquidation, or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments;

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation; or

(h) An agreement, contract, or other arrangement providing for any of the transactions in this subsection.

(10) "Share acquisition date" means the date on which a person first becomes an acquiring person of a target corporation.

(11) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(12) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(13) "Target corporation" means:

(a) Every domestic corporation organized under sections 26 through 32 of this act or any predecessor provision if, as of the share acquisition date, the corporation's principal executive office is located in the state and either a majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to sections 169 through 181 of this act, if, as of the share acquisition date:

(i) The corporation's principal executive office is located in the state;

(ii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iii) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(iv) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to section 66 of this act for a domestic corporation and the comparable provision of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the domestic or foreign corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the domestic or foreign corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a domestic or foreign corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a domestic or foreign corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

NEW SECTION. Sec. 199. TRANSACTIONS EXCLUDED FROM CHAPTER. This chapter does not apply to:

(1) A significant business transaction of a target corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the exchange act; or

(2) A significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (a) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and (b) would not at any time within the five-year period preceding the date of the first public announcement of the significant business transaction have been an acquiring person but for the inadvertent acquisition.

NEW SECTION. Sec. 200. APPROVAL OF SIGNIFICANT BUSINESS TRANSACTION REQUIRED—VIOLATION. (1)(a) Notwithstanding any provision of this title, a target corporation shall not engage in any significant business transaction for a period of five years following the acquiring person's share acquisition date unless the significant business transaction or the purchase of shares made by the acquiring person on the share acquisition date is approved prior to the acquiring person's share acquisition date by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition date, 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) A target corporation that engages in a significant business transaction that violates subsection (1) of this section and that is not exempt under section 197 of this act shall have its certificate of incorporation or certificate of authority to transact business in this state revoked under section 160 or 180 of this act for domestic or foreign target corporations, respectively. In addition, such significant transaction shall be void.

NEW SECTION. Sec. 201. PROVISIONS OF CHAPTER ADDITIONAL TO OTHER REQUIREMENTS. The requirements imposed by this chapter are to be in addition to, and not in lieu of, requirements imposed on a transaction by any provision in the articles of incorporation or the bylaws of the target corporation, or otherwise.

NEW SECTION. Sec. 202. SAVINGS PROVISIONS. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this title does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this title is reduced by this title, the penalty or punishment if not already imposed shall be imposed in accordance with this title.

NEW SECTION. Sec. 203. SEVERABILITY. If any provision of this title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the title that can be given effect without the invalid provision or application, and to this end the provisions of the title are severable.

NEW SECTION. Sec. 204. REPEAL. The following acts or parts of acts are each repealed:

(1) Section 3, chapter 53, Laws of 1965, section 1, chapter 16, Laws of 1979, section 4, chapter 35, Laws of 1982, section 1, chapter 75, Laws of 1984, section 1, chapter 117, Laws of 1986, section 710, chapter 212, Laws of 1987 and RCW 23A.04.010;

(2) Section 4, chapter 53, Laws of 1965, section 2, chapter 16, Laws of 1979 and RCW 23A.08.010;

(3) Section 5, chapter 53, Laws of 1965, section 1, chapter 58, Laws of 1969 ex. sess., section 3, chapter 16, Laws of 1979, section 2, chapter 75, Laws of 1984 and RCW 23A.08.020;

(4) Section 2, chapter 58, Laws of 1969 ex. sess., section 4, chapter 16, Laws of 1979, section 1, chapter 99, Laws of 1980, section 702, chapter 212, Laws of 1987 and RCW 23A.08.025;

(5) Section 3, chapter 58, Laws of 1969 ex. sess. and RCW 23A.08-.026;

(6) Section 6, chapter 53, Laws of 1965, section 8, chapter 190, Laws of 1967, section 1, chapter 38, Laws of 1971 ex. sess., section 3, chapter 75, Laws of 1984 and RCW 23A.08.030;

(7) Section 7, chapter 53, Laws of 1965 and RCW 23A.08.040;

(8) Section 8, chapter 53, Laws of 1965, section 5, chapter 16, Laws of 1979, section 36, chapter 55, Laws of 1987 and RCW 23A.08.050;

(9) Section 9, chapter 53, Laws of 1965, section 1, chapter 83, Laws of 1969 ex. sess., section 6, chapter 16, Laws of 1979, section 5, chapter 35, Laws of 1982 and RCW 23A.08.060;

(10) Section 10, chapter 53, Laws of 1965, section 2, chapter 117, Laws of 1986, section 37, chapter 55, Laws of 1987 and RCW 23A.08.070;

(11) Section 11, chapter 53, Laws of 1965, section 3, chapter 117, Laws of 1986 and RCW 23A.08.080;

(12) Section 12, chapter 53, Laws of 1965, section 6, chapter 35, Laws of 1982 and RCW 23A.08.090;

(13) Section 13, chapter 53, Laws of 1965, section 1, chapter 190, Laws of 1967, section 1, chapter 193, Laws of 1977 ex. sess., section 7, chapter 16, Laws of 1979, section 7, chapter 35, Laws of 1982 and RCW 23A.08.100;

(14) Section 14, chapter 53, Laws of 1965, section 2, chapter 190, Laws of 1967, section 8, chapter 35, Laws of 1982, section 4, chapter 117, Laws of 1986 and RCW 23A.08.110;

(15) Section 15, chapter 53, Laws of 1965, section 8, chapter 16, Laws of 1979, section 4, chapter 75, Laws of 1984, section 1, chapter 290, Laws of 1985, section 5, chapter 117, Laws of 1986 and RCW 23A.08.120;

(16) Section 16, chapter 53, Laws of 1965, section 5, chapter 264, Laws of 1975 1st ex. sess., section 2, chapter 193, Laws of 1977 ex. sess., section 9, chapter 35, Laws of 1982, section 5, chapter 75, Laws of 1984 and RCW 23A.08.130;

(17) Section 5, chapter 38, Laws of 1971 ex. sess., section 6, chapter 75, Laws of 1984 and RCW 23A.08.135;

(18) Section 17, chapter 53, Laws of 1965 and RCW 23A.08.140;

(19) Section 18, chapter 53, Laws of 1965, section 9, chapter 16, Laws of 1979, section 7, chapter 75, Laws of 1984, section 6, chapter 117, Laws of 1986 and RCW 23A.08.150;

(20) Section 2, chapter 290, Laws of 1985 and RCW 23A.08.155;

(21) Section 21, chapter 53, Laws of 1965, section 9, chapter 75, Laws of 1984 and RCW 23A.08.180;

(22) Section 22, chapter 53, Laws of 1965, section 10, chapter 16, Laws of 1979, section 10, chapter 75, Laws of 1984, section 3, chapter 290, Laws of 1985, section 55, chapter 35, Laws of 1986 and RCW 23A.08.190;

(23) Section 56, chapter 35, Laws of 1986 and RCW 23A.08.195;

(24) Section 23, chapter 53, Laws of 1965, section 11, chapter 16, Laws of 1979, section 11, chapter 75, Laws of 1984, section 57, chapter 35, Laws of 1986 and RCW 23A.08.200;

(25) Section 4, chapter 290, Laws of 1985 and RCW 23A.08.205;

(26) Section 25, chapter 53, Laws of 1965 and RCW 23A.08.220;

(27) Section 26, chapter 53, Laws of 1965, section 12, chapter 16, Laws of 1979 and RCW 23A.08.230;

(28) Section 27, chapter 53, Laws of 1965 and RCW 23A.08.240;

- (29) Section 28, chapter 53, Laws of 1965, section 13, chapter 16, Laws of 1979, section 7, chapter 117, Laws of 1986 and RCW 23A.08.250;
- (30) Section 2, chapter 99, Laws of 1980 and RCW 23A.08.255;
- (31) Section 29, chapter 53, Laws of 1965, section 8, chapter 117, Laws of 1986 and RCW 23A.08.260;
- (32) Section 14, chapter 16, Laws of 1979 and RCW 23A.08.265;
- (33) Section 30, chapter 53, Laws of 1965, section 9, chapter 117, Laws of 1986 and RCW 23A.08.270;
- (34) Section 31, chapter 53, Laws of 1965, section 15, chapter 16, Laws of 1979 and RCW 23A.08.280;
- (35) Section 32, chapter 53, Laws of 1965, section 16, chapter 16, Laws of 1979 and RCW 23A.08.290;
- (36) Section 33, chapter 53, Laws of 1965, section 17, chapter 16, Laws of 1979, section 12, chapter 75, Laws of 1984 and RCW 23A.08.300;
- (37) Section 5, chapter 58, Laws of 1969 ex. sess., section 1, chapter 28, Laws of 1973, section 10, chapter 117, Laws of 1986 and RCW 23A.08.305;
- (38) Section 34, chapter 53, Laws of 1965, section 23, chapter 154, Laws of 1973 1st ex. sess., section 58, chapter 35, Laws of 1986 and RCW 23A.08.310;
- (39) Section 35, chapter 53, Laws of 1965, section 59, chapter 35, Laws of 1986 and RCW 23A.08.320;
- (40) Section 1, chapter 264, Laws of 1975 1st ex. sess. and RCW 23A.08.325;
- (41) Section 36, chapter 53, Laws of 1965, section 3, chapter 99, Laws of 1980, section 60, chapter 35, Laws of 1986 and RCW 23A.08.330;
- (42) Section 37, chapter 53, Laws of 1965, section 4, chapter 99, Laws of 1980, section 10, chapter 35, Laws of 1982 and RCW 23A.08.340;
- (43) Section 5, chapter 99, Laws of 1980 and RCW 23A.08.343;
- (44) Section 1, chapter 176, Laws of 1967, section 18, chapter 16, Laws of 1979 and RCW 23A.08.345;
- (45) Section 38, chapter 53, Laws of 1965, section 2, chapter 264, Laws of 1975 1st ex. sess., section 19, chapter 16, Laws of 1979 and RCW 23A.08.350;
- (46) Section 39, chapter 53, Laws of 1965 and RCW 23A.08.360;
- (47) Section 40, chapter 53, Laws of 1965 and RCW 23A.08.370;
- (48) Section 41, chapter 53, Laws of 1965, section 20, chapter 16, Laws of 1979, section 11, chapter 117, Laws of 1986 and RCW 23A.08.380;
- (49) Section 42, chapter 53, Laws of 1965, section 21, chapter 16, Laws of 1979, section 7, chapter 290, Laws of 1985, section 12, chapter 117, Laws of 1986 and RCW 23A.08.390;
- (50) Section 6, chapter 99, Laws of 1980 and RCW 23A.08.395;

(51) Section 43, chapter 53, Laws of 1965, section 7, chapter 99, Laws of 1980, section 13, chapter 75, Laws of 1984, section 13, chapter 117, Laws of 1986 and RCW 23A.08.400;

(52) Section 44, chapter 53, Laws of 1965, section 3, chapter 264, Laws of 1975 1st ex. sess., section 22, chapter 16, Laws of 1979 and RCW 23A.08.410;

(53) Section 45, chapter 53, Laws of 1965, section 23, chapter 16, Laws of 1979, section 14, chapter 75, Laws of 1984 and RCW 23A.08.420;

(54) Section 6, chapter 290, Laws of 1985 and RCW 23A.08.425;

(55) Section 5, chapter 290, Laws of 1985 and RCW 23A.08.435;

(56) Section 8, chapter 290, Laws of 1985 and RCW 23A.08.445;

(57) Section 48, chapter 53, Laws of 1965, section 24, chapter 16, Laws of 1979, section 8, chapter 99, Laws of 1980, section 11, chapter 35, Laws of 1982, section 15, chapter 75, Laws of 1984, section 9, chapter 290, Laws of 1985, section 14, chapter 117, Laws of 1986 and RCW 23A.08.450;

(58) Section 49, chapter 53, Laws of 1965 and RCW 23A.08.460;

(59) Section 50, chapter 53, Laws of 1965, section 4, chapter 264, Laws of 1975 1st ex. sess., section 25, chapter 16, Laws of 1979 and RCW 23A.08.470;

(60) Section 52, chapter 53, Laws of 1965 and RCW 23A.08.490;

(61) Section 53, chapter 53, Laws of 1965, section 26, chapter 16, Laws of 1979, section 16, chapter 75, Laws of 1984 and RCW 23A.08.500;

(62) Section 54, chapter 53, Laws of 1965, section 36, chapter 292, Laws of 1971 ex. sess., section 4, chapter 302, Laws of 1981 and RCW 23A.12.010;

(63) Section 55, chapter 53, Laws of 1965, section 27, chapter 16, Laws of 1979, section 14, chapter 35, Laws of 1982, section 17, chapter 75, Laws of 1984, section 10, chapter 290, Laws of 1985, section 701, chapter 212, Laws of 1987 and RCW 23A.12.020;

(64) Section 56, chapter 53, Laws of 1965, section 4, chapter 193, Laws of 1977 ex. sess., section 15, chapter 35, Laws of 1982 and RCW 23A.12.030;

(65) Section 57, chapter 53, Laws of 1965, section 28, chapter 16, Laws of 1979, section 16, chapter 35, Laws of 1982 and RCW 23A.12.040;

(66) Section 59, chapter 53, Laws of 1965, section 29, chapter 16, Laws of 1979 and RCW 23A.12.060;

(67) Section 60, chapter 53, Laws of 1965, section 11, chapter 290, Laws of 1985 and RCW 23A.16.010;

(68) Section 61, chapter 53, Laws of 1965, section 30, chapter 16, Laws of 1979, section 18, chapter 75, Laws of 1984, section 15, chapter 117, Laws of 1986 and RCW 23A.16.020;

(69) Section 62, chapter 53, Laws of 1965, section 12, chapter 290, Laws of 1985 and RCW 23A.16.030;

(70) Section 63, chapter 53, Laws of 1965, section 5, chapter 193, Laws of 1977 ex. sess., section 31, chapter 16, Laws of 1979, section 17, chapter 35, Laws of 1982, section 19, chapter 75, Laws of 1984, section 13, chapter 290, Laws of 1985 and RCW 23A.16.040;

(71) Section 64, chapter 53, Laws of 1965, section 4, chapter 190, Laws of 1967, section 6, chapter 193, Laws of 1977 ex. sess., section 18, chapter 35, Laws of 1982 and RCW 23A.16.050;

(72) Section 65, chapter 53, Laws of 1965, section 32, chapter 16, Laws of 1979, section 19, chapter 35, Laws of 1982 and RCW 23A.16.060;

(73) Section 33, chapter 16, Laws of 1979, section 20, chapter 35, Laws of 1982, section 16, chapter 117, Laws of 1986 and RCW 23A.16.075;

(74) Section 67, chapter 53, Laws of 1965, section 8, chapter 193, Laws of 1977 ex. sess., section 34, chapter 16, Laws of 1979, section 21, chapter 35, Laws of 1982 and RCW 23A.16.080;

(75) Section 73, chapter 53, Laws of 1965, section 2, chapter 38, Laws of 1971 ex. sess. and RCW 23A.20.010;

(76) Section 74, chapter 53, Laws of 1965, section 3, chapter 38, Laws of 1971 ex. sess. and RCW 23A.20.020;

(77) Section 35, chapter 16, Laws of 1979 and RCW 23A.20.025;

(78) Section 75, chapter 53, Laws of 1965, section 36, chapter 16, Laws of 1979 and RCW 23A.20.030;

(79) Section 76, chapter 53, Laws of 1965, section 12, chapter 193, Laws of 1977 ex. sess., section 37, chapter 16, Laws of 1979, section 25, chapter 35, Laws of 1982 and RCW 23A.20.040;

(80) Section 77, chapter 53, Laws of 1965, section 4, chapter 38, Laws of 1971 ex. sess., section 13, chapter 193, Laws of 1977 ex. sess., section 38, chapter 16, Laws of 1979, section 26, chapter 35, Laws of 1982 and RCW 23A.20.050;

(81) Section 78, chapter 53, Laws of 1965, section 39, chapter 16, Laws of 1979, section 27, chapter 35, Laws of 1982 and RCW 23A.20.060;

(82) Section 79, chapter 53, Laws of 1965, section 40, chapter 16, Laws of 1979, section 28, chapter 35, Laws of 1982 and RCW 23A.20.070;

(83) Section 80, chapter 53, Laws of 1965, section 41, chapter 16, Laws of 1979 and RCW 23A.24.010;

(84) Section 81, chapter 53, Laws of 1965, section 42, chapter 16, Laws of 1979 and RCW 23A.24.020;

(85) Section 82, chapter 53, Laws of 1965, section 43, chapter 16, Laws of 1979 and RCW 23A.24.030;

(86) Section 83, chapter 53, Laws of 1965, section 44, chapter 16, Laws of 1979, section 14, chapter 290, Laws of 1985, section 61, chapter 35, Laws of 1986 and RCW 23A.24.040;

(87) Section 84, chapter 53, Laws of 1965, section 14, chapter 193, Laws of 1977 ex. sess., section 45, chapter 16, Laws of 1979, section 29, chapter 35, Laws of 1982 and RCW 23A.28.010;

(88) Section 85, chapter 53, Laws of 1965, section 15, chapter 193, Laws of 1977 ex. sess., section 30, chapter 35, Laws 1982 and RCW 23A.28.020;

(89) Section 86, chapter 53, Laws of 1965, section 16, chapter 193, Laws of 1977 ex. sess., section 31, chapter 35, Laws of 1982 and RCW 23A.28.030;

(90) Section 87, chapter 53, Laws of 1965, section 17, chapter 193, Laws of 1977 ex. sess., section 32, chapter 35, Laws of 1982 and RCW 23A.28.040;

(91) Section 88, chapter 53, Laws of 1965 and RCW 23A.28.050;

(92) Section 89, chapter 53, Laws of 1965, section 33, chapter 35, Laws of 1982 and RCW 23A.28.060;

(93) Section 90, chapter 53, Laws of 1965, section 18, chapter 193, Laws of 1977 ex. sess., section 34, chapter 35, Laws of 1982 and RCW 23A.28.070;

(94) Section 91, chapter 53, Laws of 1965, section 19, chapter 193, Laws of 1977 ex. sess., section 35, chapter 35, Laws of 1982 and RCW 23A.28.080;

(95) Section 92, chapter 53, Laws of 1965, section 20, chapter 193, Laws of 1977 ex. sess., section 36, chapter 35, Laws of 1982 and RCW 23A.28.090;

(96) Section 93, chapter 53, Laws of 1965 and RCW 23A.28.100;

(97) Section 94, chapter 53, Laws of 1965, section 21, chapter 193, Laws of 1977 ex. sess., section 37, chapter 35, Laws of 1982 and RCW 23A.28.110;

(98) Section 95, chapter 53, Laws of 1965, section 22, chapter 193, Laws of 1977 ex. sess., section 38, chapter 35, Laws of 1982 and RCW 23A.28.120;

(99) Section 10, chapter 99, Laws of 1980, section 39, chapter 35, Laws of 1982, section 1, chapter 32, Laws of 1983 and RCW 23A.28.125;

(100) Section 2, chapter 32, Laws of 1983 and RCW 23A.28.127;

(101) Section 6, chapter 4, Laws of 1987 2nd ex. sess., section 3, chapter 225, Laws of 1988 and RCW 23A.28.129;

(102) Section 96, chapter 53, Laws of 1965, section 1, chapter 92, Laws of 1969 ex. sess., section 40, chapter 35, Laws of 1982 and RCW 23A.28.130;

(103) Section 3, chapter 32, Laws of 1983, section 15, chapter 290, Laws of 1985 and RCW 23A.28.135;

(104) Section 5, chapter 32, Laws of 1983 and RCW 23A.28.141;

(105) Section 98, chapter 53, Laws of 1965 and RCW 23A.28.150;

(106) Section 99, chapter 53, Laws of 1965 and RCW 23A.28.160;

- (107) Section 100, chapter 53, Laws of 1965 and RCW 23A.28.170;
- (108) Section 101, chapter 53, Laws of 1965 and RCW 23A.28.180;
- (109) Section 102, chapter 53, Laws of 1965 and RCW 23A.28.190;
- (110) Section 103, chapter 53, Laws of 1965 and RCW 23A.28.200;
- (111) Section 104, chapter 53, Laws of 1965 and RCW 23A.28.210;
- (112) Section 105, chapter 53, Laws of 1965 and RCW 23A.28.220;
- (113) Section 106, chapter 53, Laws of 1965 and RCW 23A.28.230;
- (114) Section 107, chapter 53, Laws of 1965, section 85, chapter 7, Laws of 1985 and RCW 23A.28.240;
- (115) Section 108, chapter 53, Laws of 1965, section 11, chapter 99, Laws of 1980, section 41, chapter 35, Laws of 1982, section 4, chapter 32, Laws of 1983 and RCW 23A.28.250;
- (116) Section 109, chapter 53, Laws of 1965, section 46, chapter 16, Laws of 1979, section 8, chapter 4, Laws of 1987 2nd ex. sess., section 5, chapter 225, Laws of 1988 and RCW 23A.32.010;
- (117) Section 110, chapter 53, Laws of 1965 and RCW 23A.32.020;
- (118) Section 111, chapter 53, Laws of 1965, section 6, chapter 190, Laws of 1967, section 47, chapter 16, Laws of 1979, section 38, chapter 55, Laws of 1987 and RCW 23A.32.030;
- (119) Section 112, chapter 53, Laws of 1965, section 48, chapter 16, Laws of 1979 and RCW 23A.32.040;
- (120) Section 6, chapter 2, Laws of 1983, section 6, chapter 32, Laws of 1983, section 16, chapter 290, Laws of 1985, section 17, chapter 117, Laws of 1986 and RCW 23A.32.050;
- (121) Section 114, chapter 53, Laws of 1965, section 2, chapter 22, Laws of 1971, section 1, chapter 89, Laws of 1973, section 50, chapter 16, Laws of 1979, section 43, chapter 35, Laws of 1982 and RCW 23A.32.060;
- (122) Section 115, chapter 53, Laws of 1965, section 44, chapter 35, Laws of 1982 and RCW 23A.32.070;
- (123) Section 54, chapter 35, Laws of 1982 and RCW 23A.32.072;
- (124) Section 51, chapter 16, Laws of 1979, section 1, chapter 230, Laws of 1981, section 45, chapter 35, Laws of 1982, section 17, chapter 290, Laws of 1985 and RCW 23A.32.073;
- (125) Section 52, chapter 16, Laws of 1979, section 2, chapter 230, Laws of 1981, section 46, chapter 35, Laws of 1982, section 18, chapter 290, Laws of 1985 and RCW 23A.32.075;
- (126) Section 116, chapter 53, Laws of 1965, section 3, chapter 22, Laws of 1971, section 47, chapter 35, Laws of 1982 and RCW 23A.32.080;
- (127) Section 117, chapter 53, Laws of 1965, section 54, chapter 16, Laws of 1979, section 48, chapter 35, Laws of 1982, section 18, chapter 117, Laws of 1986 and RCW 23A.32.090;
- (128) Section 118, chapter 53, Laws of 1965, section 49, chapter 35, Laws of 1982, section 19, chapter 117, Laws of 1986 and RCW 23A.32-.100;

(129) Section 121, chapter 53, Laws of 1965, section 22, chapter 117, Laws of 1986 and RCW 23A.32.130;

(130) Section 122, chapter 53, Laws of 1965, section 55, chapter 16, Laws of 1979, section 50, chapter 35, Laws of 1982, section 19, chapter 290, Laws of 1985 and RCW 23A.32.140;

(131) Section 123, chapter 53, Laws of 1965, section 51, chapter 35, Laws of 1982 and RCW 23A.32.150;

(132) Section 124, chapter 53, Laws of 1965, section 12, chapter 99, Laws of 1980, section 52, chapter 35, Laws of 1982, section 7, chapter 32, Laws of 1983, section 23, chapter 117, Laws of 1986 and RCW 23A.32-.160;

(133) Section 125, chapter 53, Laws of 1965, section 53, chapter 35, Laws of 1982, section 8, chapter 32, Laws of 1983, section 24, chapter 117, Laws of 1986 and RCW 23A.32.170;

(134) Section 20, chapter 117, Laws of 1986 and RCW 23A.32.173;

(135) Section 21, chapter 117, Laws of 1986 and RCW 23A.32.176;

(136) Section 126, chapter 53, Laws of 1965 and RCW 23A.32.180;

(137) Section 127, chapter 53, Laws of 1965 and RCW 23A.32.190;

(138) Section 7, chapter 4, Laws of 1987 2nd ex. sess., section 4, chapter 225, Laws of 1988 and RCW 23A.32.200;

(139) Section 128, chapter 53, Laws of 1965 and RCW 23A.36.010;

(140) Section 129, chapter 53, Laws of 1965 and RCW 23A.36.020;

(141) Section 130, chapter 53, Laws of 1965, section 56, chapter 16, Laws of 1979 and RCW 23A.36.030;

(142) Section 131, chapter 53, Laws of 1965 and RCW 23A.36.040;

(143) Section 132, chapter 53, Laws of 1965, section 2, chapter 133, Laws of 1971 ex. sess., section 56, chapter 35, Laws of 1982 and RCW 23A.36.050;

(144) Section 133, chapter 53, Laws of 1965 and RCW 23A.36.060;

(145) Section 134, chapter 53, Laws of 1965, section 57, chapter 35, Laws of 1982 and RCW 23A.40.010;

(146) Section 135, chapter 53, Laws of 1965, section 7, chapter 190, Laws of 1967, section 3, chapter 83, Laws of 1969 ex. sess., section 3, chapter 133, Laws of 1971 ex. sess., section 13, chapter 99, Laws of 1980, section 3, chapter 230, Laws of 1981, section 58, chapter 35, Laws of 1982, section 21, chapter 75, Laws of 1984, section 25, chapter 117, Laws of 1986 and RCW 23A.40.020;

(147) Section 136, chapter 53, Laws of 1965, section 4, chapter 133, Laws of 1971 ex. sess., section 1, chapter 133, Laws of 1979 ex. sess., section 59, chapter 35, Laws of 1982 and RCW 23A.40.030;

(148) Section 51, chapter 53, Laws of 1965, section 3, chapter 190, Laws of 1967, section 2, chapter 83, Laws of 1969 ex. sess., section 6, chapter 38, Laws of 1971 ex. sess., section 1, chapter 133, Laws of 1971 ex. sess., section 1, chapter 71, Laws of 1973, section 3, chapter 193, Laws of

1977 ex. sess., section 9, chapter 99, Laws of 1980, section 12, chapter 35, Laws of 1982, section 20, chapter 290, Laws of 1985 and RCW 23A.40.032;

(149) Section 14, chapter 99, Laws of 1980, section 60, chapter 35, Laws of 1982 and RCW 23A.40.035;

(150) Section 137, chapter 53, Laws of 1965, section 23, chapter 193, Laws of 1977 ex. sess., section 61, chapter 35, Laws of 1982, section 21, chapter 290, Laws of 1985 and RCW 23A.40.040;

(151) Section 139, chapter 53, Laws of 1965, section 2, chapter 92, Laws of 1969 ex. sess., section 63, chapter 35, Laws of 1982, section 22, chapter 290, Laws of 1985 and RCW 23A.40.060;

(152) Section 140, chapter 53, Laws of 1965, section 3, chapter 92, Laws of 1969 ex. sess., section 15, chapter 99, Laws of 1980, section 64, chapter 35, Laws of 1982, section 23, chapter 290, Laws of 1985 and RCW 23A.40.070;

(153) Section 4, chapter 230, Laws of 1981 and RCW 23A.40.077;

(154) Section 141, chapter 53, Laws of 1965 and RCW 23A.40.080;

(155) Section 148, chapter 53, Laws of 1965, section 65, chapter 35, Laws of 1982 and RCW 23A.44.010;

(156) Section 149, chapter 53, Laws of 1965, section 66, chapter 35, Laws of 1982 and RCW 23A.44.020;

(157) Section 150, chapter 53, Laws of 1965 and RCW 23A.44.030;

(158) Section 151, chapter 53, Laws of 1965, section 67, chapter 35, Laws of 1982 and RCW 23A.44.040;

(159) Section 152, chapter 53, Laws of 1965, section 68, chapter 35, Laws of 1982 and RCW 23A.44.050;

(160) Section 153, chapter 53, Laws of 1965, section 69, chapter 35, Laws of 1982 and RCW 23A.44.060;

(161) Section 154, chapter 53, Laws of 1965 and RCW 23A.44.070;

(162) Section 155, chapter 53, Laws of 1965 and RCW 23A.44.080;

(163) Section 157, chapter 53, Laws of 1965, section 9, chapter 32, Laws of 1983 and RCW 23A.44.100;

(164) Section 158, chapter 53, Laws of 1965 and RCW 23A.44.110;

(165) Section 159, chapter 53, Laws of 1965 and RCW 23A.44.120;

(166) Section 160, chapter 53, Laws of 1965 and RCW 23A.44.130;

(167) Section 161, chapter 53, Laws of 1965 and RCW 23A.44.140;

(168) Section 10, chapter 190, Laws of 1967 and RCW 23A.44.145;

(169) Section 4, chapter 58, Laws of 1969 ex. sess., section 70, chapter 35, Laws of 1982 and RCW 23A.44.146;

(170) Section 162, chapter 53, Laws of 1965 and RCW 23A.44.150;

(171) Section 163, chapter 53, Laws of 1965 and RCW 23A.44.160;

(172) Section 4, chapter 83, Laws of 1969 ex. sess. and RCW 23A.44.170;

(173) Section 23, chapter 75, Laws of 1984 and RCW 23A.44.180;

(174) Section 1, chapter 4, Laws of 1987 2nd ex. sess., section 1, chapter 225, Laws of 1988 and RCW 23A.50.010;

(175) Section 2, chapter 4, Laws of 1987 2nd ex. sess., section 2, chapter 225, Laws of 1988 and RCW 23A.50.020;

(176) Section 3, chapter 4, Laws of 1987 2nd ex. sess. and RCW 23A.50.030;

(177) Section 4, chapter 4, Laws of 1987 2nd ex. sess. and RCW 23A.50.040;

(178) Section 5, chapter 4, Laws of 1987 2nd ex. sess. and RCW 23A.50.050;

(179) Section 9, chapter 4, Laws of 1987 2nd ex. sess. and RCW 23A.50.900;

(180) Section 2, chapter 53, Laws of 1965 and RCW 23A.98.010;

(181) Section 164, chapter 53, Laws of 1965 and RCW 23A.98.020;

(182) Section 165, chapter 53, Laws of 1965, section 59, chapter 16, Laws of 1979, section 71, chapter 35, Laws of 1982, section 24, chapter 75, Laws of 1984, section 24, chapter 290, Laws of 1985 and RCW 23A.98-.030; and

(183) Section 167, chapter 53, Laws of 1965 and RCW 23A.98.050.

NEW SECTION. Sec. 205. EFFECTIVE DATE. This act shall take effect July 1, 1990.

NEW SECTION. Sec. 206. Section headings as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 207. LEGISLATIVE DIRECTIVE. (1) Sections 1 through 25 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "GENERAL PROVISIONS."

(2) Sections 26 through 32 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "INCORPORATION."

(3) Sections 33 through 36 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "POWERS AND PURPOSES."

(4) Sections 37 through 39 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "NAME."

(5) Sections 40 through 43 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "OFFICE AND AGENT."

(6) Sections 44 through 59 of this act shall constitute a new chapter to be added to Title ... RCW (sections 1 through 201 of this act) and codified with the chapter heading "SHARES AND DISTRIBUTIONS."

(7) Sections 60 through 79 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "SHAREHOLDERS."

(8) Sections 80 through 119 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "DIRECTORS AND OFFICERS."

(9) Sections 120 through 130 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS."

(10) Sections 131 through 137 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "MERGER AND SHARE EXCHANGE."

(11) Sections 138 through 139 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "SALE OF ASSETS."

(12) Sections 140 through 153 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "DISSENTERS' RIGHTS."

(13) Sections 154 through 168 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "DISSOLUTION."

(14) Sections 169 through 181 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "FOREIGN CORPORATIONS."

(15) Sections 182 through 187 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "RECORDS AND REPORTS."

(16) Sections 188 through 190 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "MISCELLANEOUS PROVISIONS."

(17) Sections 191 through 196 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "NONADMITTED ORGANIZATIONS."

(18) Sections 197 through 201 of this act shall constitute a new chapter to be added to Title . . . RCW (sections 1 through 201 of this act) and codified with the chapter heading "SIGNIFICANT BUSINESS TRANSACTIONS."

Passed the Senate February 22, 1989.

Passed the House April 12, 1989.

Approved by the Governor April 22, 1989.

Filed in Office of Secretary of State April 22, 1989.

CHAPTER 166

[House Bill No. 1485]

POSTSECONDARY EDUCATION LOANS—INTEREST RATES

AN ACT Relating to interest rates on postsecondary education loans; and adding a new section to chapter 24.03 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 24.03 RCW to read as follows:

A nonprofit corporation may charge interest upon any loan made under a program to finance postsecondary education at any rate or rates of interest which are permitted by state or federal law to be charged by any state or federally chartered bank, savings and loan association, or credit union.

Passed the House March 14, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 167

[House Bill No. 1286]

INDUSTRIAL DISTRICTS—REMOVAL OF PROPERTY FROM DISTRICT

AN ACT Relating to removal of property from industrial development districts; and amending RCW 53.25.040.

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

Sec. 1. Section 4, chapter 73, Laws of 1955 as amended by section 53, chapter 469, Laws of 1985 and RCW 53.25.040 are each amended to read as follows:

(1) A port commission may, after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper of general circulation in the port district, create industrial development districts within the district and define the boundaries thereof, if it finds that the creation of the industrial development district is proper and desirable in establishing and developing a system of harbor improvements and industrial development in the port district.

(2) The boundaries of an industrial development district created by subsection (1) of this section may be revised from time to time by resolution of the port commission, to delete land area therefrom, if the land area to be deleted was acquired by the port district with its own funds or by gift or transfer other than pursuant to RCW 53.25.050 or 53.25.060.

As to any land area to be deleted under this subsection that was acquired or improved by the port district with funds obtained through RCW

53.36.100, the port district shall deposit funds equal to the fair market value of the lands and improvements into the fund for future use described in RCW 53.36.100 and such funds shall be thereafter subject to RCW 53.36.100. The fair market value of the land and improvements shall be determined as of the effective date of the port commission action deleting the land from the industrial development district and shall be determined by an average of at least two independent appraisals by professionally designated real estate appraisers as defined in RCW 74.46.020 or licensed real estate brokers. The funds shall be deposited into the fund for future use described in RCW 53.36.100 within ninety days of the effective date of the port commission action deleting the land area from the industrial district. Land areas deleted from an industrial development district under this subsection shall not be further subject to the provisions of this chapter. This subsection shall apply to presently existing and future industrial development districts. Land areas deleted from an industrial development district under this subsection that were included within such district for less than two years, if the port district acquired the land through condemnation or as a consequence of threatened condemnation, shall be offered for sale, for cash, at the appraised price, to the former owner of the property from whom the district obtained title. Such offer shall be made by certified or registered letter to the last known address of the former owner. The letter shall include the appraised price of the property and notice that the former owner must respond in writing within thirty days or lose the right to purchase. If this right to purchase is exercised, the sale shall be closed by midnight of the sixtieth day, including nonbusiness days, following close of the thirty-day period.

Passed the House March 14, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 168

[Substitute Senate Bill No. 5142]

LOCAL GOVERNMENT FINANCIAL REPORTS TO STATE AUDITOR—DUE DATES

AN ACT Relating to local government financial reports; and amending RCW 43.09.230.

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

Sec. 1. Section 43.09.230, chapter 8, Laws of 1965 as amended by section 41, chapter 75, Laws of 1977 and RCW 43.09.230 are each amended to read as follows:

The state auditor shall require from every taxing district and other political subdivisions financial reports covering the full period of each fiscal

year, in accordance with the forms and methods prescribed by ~~((him))~~ the state auditor, which shall be uniform for all accounts of the same class.

Such reports shall be prepared, certified, and filed with the division within ~~((thirty))~~ one hundred fifty days after the close of each fiscal year.

The reports shall contain accurate statements, in summarized form, of all collections made, or receipts received, by the officers from all sources; all accounts due the public treasury, but not collected; and all expenditures for every purpose, and by what authority authorized; and also: (1) A statement of all costs of ownership and operation, and of all income, of each and every public service industry owned and operated by a municipality; (2) a statement of the entire public debt of every taxing district, to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, and the provisions made for the payment thereof; (3) a classified statement of all receipts and expenditures by any public institution; together with such other information as may be required by the state auditor.

The reports shall be certified as to their correctness by the state auditor, ~~((his))~~ the state auditor's deputies, or other person legally authorized to make such certificate.

Their substance shall be published in an annual volume of comparative statistics at the expense of the state as a public document.

Passed the Senate February 13, 1989.

Passed the House April 10, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 169

[House Bill No. 1258]

ASSAULT ON LAW ENFORCEMENT OFFICER

AN ACT Relating to assaults on law enforcement agency personnel and certain fire officials and personnel; amending RCW 9A.36.031; and prescribing penalties.

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

Sec. 1. Section 6, chapter 257, Laws of 1986 as amended by section 3, chapter 158, Laws of 1988 and RCW 9A.36.031 are each amended to read as follows:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver by a public or private transit company while that person is operating or is in control of a vehicle owned or operated by the transit company; or

(c) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(d) Assaults a fire fighter or other employee of a fire department or fire protection district who was performing his or her official duties at the time of the assault; or

(e) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(f) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.

(2) Assault in the third degree is a class C felony.

Passed the House April 15, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 170

[Senate Bill No. 5329]

MASTER LICENSE DELINQUENCY FEE

AN ACT Relating to business license fees; and amending RCW 19.02.085.

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

Sec. 1. Section 9, chapter 182, Laws of 1982 and RCW 19.02.085 are each amended to read as follows:

To encourage timely renewal by applicants, a master license delinquency fee shall be imposed on licensees who fail to renew by the master license expiration date. The master license delinquency fee shall be ~~((computed as))~~ the lesser of one hundred fifty dollars or fifty percent of a base comprised of the licensee's renewal fee minus corporate licensing taxes, corporation annual report fee, and any interest fees or penalties charged for late taxes or corporate renewals. The master license delinquency fee shall be added to the renewal fee and paid by the licensee before a master license shall be renewed. The delinquency fee shall be deposited in the general fund.

Passed the Senate March 8, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 171

[Substitute Senate Bill No. 5196]

DROUGHT RELIEF—DEPARTMENT OF ECOLOGY—EMERGENCY POWERS

AN ACT Relating to emergency drought relief; amending RCW 43.83B.210, 75.20.150, 86.16.180, 90.54.022, and 90.58.370; adding new sections to chapter 43.83B RCW; repealing RCW 43.83B.305, 43.83B.310, 43.83B.315, 43.83B.320, 43.83B.325, 43.83B.330, 43.83B.340, 43.83B.342, and 43.83B.344; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to provide emergency powers to the department of ecology to enable it to take actions, in a timely and expeditious manner, that are designed to alleviate hardships and reduce burdens on various water users and uses arising from drought conditions. As used in this chapter, "drought condition" means that the water supply for a geographical area or for a significant portion of a geographical area is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water uses and users.

NEW SECTION. Sec. 2. (1) Whenever it appears to the department of ecology that a drought condition either exists or is forecast to occur within the state or portions thereof, the department of ecology is authorized to issue orders, pursuant to rules previously adopted, to implement the powers as set forth in sections 3 through 5 of this act. The department shall, immediately upon the issuance of an order under this section, cause said order to be published in newspapers of general circulation in the areas of the state to which the order relates. Prior to the issuance of an order, the department shall (a) consult with and obtain the views of the federal and state government entities identified in the drought contingency plan periodically revised by the department pursuant to section 3(4) of this act, and (b) obtain the written approval of the governor. Orders issued under this section shall be deemed orders for the purposes of chapter 34.05 RCW.

(2) Any order issued under subsection (1) of this section shall contain a termination date for the order. The termination date shall be not later than one calendar year from the date the order is issued. Although the department may, with the written approval of the governor, change the termination date by amending the order, no such amendment or series of amendments may have the effect of extending its termination to a date which is later than two calendar years after the issuance of the order.

(3) The provisions of subsection (2) of this section do not preclude the issuance of more than one order under subsection (1) of this section for different areas of the state or sequentially for the same area as the need arises for such an order or orders.

NEW SECTION. Sec. 3. Upon the issuance of an order under section 2 of this act, the department of ecology is empowered to:

(1)(a) Authorize emergency withdrawal of public surface and ground waters, including dead storage within reservoirs, on a temporary basis and authorize associated physical works which may be either temporary or permanent. The termination date for the authority to make such an emergency withdrawal may not be later than the termination date of the order issued under section 2 of this act under which the power to authorize the withdrawal is established. The department of ecology may issue such withdrawal authorization when, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found:

(i) The waters proposed for withdrawal are to be used for a beneficial use involving a previously established activity or purpose;

(ii) The previously established activity or purpose was furnished water through rights applicable to the use of a public body of water that cannot be exercised due to the lack of water arising from natural drought conditions; and

(iii) The proposed withdrawal will not reduce flows or levels below essential minimums necessary (A) to assure the maintenance of fisheries requirements, and (B) to protect federal and state interests including, among others, power generation, navigation, and existing water rights;

(b) All withdrawal authorizations issued under this section shall contain provisions that allow for termination of withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in (a)(iii) of this subsection. Domestic and irrigation uses of public surface and ground waters shall be given priority in determining "beneficial uses." As to water withdrawal and associated works authorized under this subsection, the requirements of chapter 43.21C RCW and public bidding requirements as otherwise provided by law are waived and inapplicable. All state and local agencies with authority to issue permits or other authorizations for such works shall, to the extent possible, expedite the processing of the permits or authorizations in keeping with the emergency nature of the requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. All state departments or other agencies having jurisdiction over state or other public lands, if such lands are necessary to effectuate the withdrawal authorizations issued under this subsection, shall provide short-term easements or other appropriate property interest upon the payment of the fair market value. This mandate shall not apply to any lands of the state that are reserved for a special purpose or use that cannot properly be carried out if the property interest were conveyed;

(2) Approve a temporary change in purpose, place of use, or point of diversion, consistent with existing state policy allowing transfer or lease of waters between willing parties, as provided for in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with any requirements of (a)

notice of newspaper publication of these sections or (b) the state environmental policy act, chapter 43.21C RCW, is not required when such changes are necessary to respond to drought conditions as determined by the department of ecology. An approval of a temporary change of a water right as authorized under this subsection is not admissible as evidence in either supporting or contesting the validity of water claims in STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY V. ACQUAVELLA, Yakima county superior court number 77-2-01484-5 or any similar proceeding where the existence of a water right is at issue.

(3) Employ additional persons for specified terms of time, consistent with the term of a drought condition, as are necessary to ensure the successful performance of the activities associated with implementing the emergency drought program of this chapter.

(4) Revise the drought contingency plan previously developed by the department; and

(5) Acquire needed emergency drought-related equipment.

NEW SECTION. Sec. 4. (1) The department of ecology is authorized to make loans, grants, or combinations of loans and grants from emergency agricultural water supply funds when necessary to provide water to alleviate emergency drought conditions in order to ensure the survival of irrigated crops and the state's fisheries. For the purposes of this section, "emergency agricultural water supply funds" means funds appropriated from the state emergency water projects revolving account created under RCW 43.83B-.360. The department of ecology may make the loans, grants, or combinations of loans and grants as matching funds in any case where federal, local, or other funds have been made available on a matching basis. The department may make a loan of up to ninety percent of the total eligible project cost or combination loan and grant up to one hundred percent of the total single project cost. The grant portion for any single project shall not exceed twenty percent of the total project cost except that, for activities forecast to have fifty percent or less of normal seasonal water supply, the grant portion for any single project or entity shall not exceed forty percent of the total project cost. No single entity shall receive more than ten percent of the total emergency agricultural water supply funds available for drought relief. These funds shall not be used for nonagricultural drought relief purposes unless there are no other capital budget funds available for these purposes. In any biennium the total expenditures of emergency agricultural water supply funds for nonagricultural drought relief purposes may not exceed ten percent of the total of such funds available during that biennium.

(2)(a) Except as provided in (b) of this subsection, after June 30, 1989, emergency agricultural water supply funds, including the repayment of loans and any accrued interest, shall not be used for any purpose except during drought conditions as determined under sections 1 and 2 of this act.

(b) Emergency agricultural water supply funds may be used on a one-time basis for the development of procedures to be used by state governmental entities to implement the state's drought contingency plan.

NEW SECTION. Sec. 5. The department shall adopt such rules as are necessary to ensure the successful implementation of this chapter.

NEW SECTION. Sec. 6. Nothing in this chapter shall:

- (1) Authorize any interference whatsoever with existing water rights;
- (2) Authorize the establishment of rights to withdrawal of waters of a permanent nature or of rights with any priority;
- (3) Authorize the establishment of a water right under RCW 90.03-.250 or 90.44.060;
- (4) Preclude any person from filing an application pursuant to RCW 90.03.250 or 90.44.060.

Sec. 7. Section 3, chapter 295, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 46, Laws of 1988 and RCW 43.83B.210 are each amended to read as follows:

The department of ecology is authorized to make loans or grants or combinations thereof ~~((;-(+)))~~ from funds under RCW 43.83B.010 through 43.83B.110 to eligible public bodies as defined in RCW 43.83B.050 for rehabilitation or betterment of agricultural water supply facilities, and/or construction of agricultural water supply facilities required to develop new irrigated lands ~~((; or (2) from emergency agricultural water supply funds under RCW 43.83B.300 when required to provide water to alleviate emergency drought conditions to assure the survival of irrigated crops and the state's fisheries))~~. The department of ecology may make such loans or grants or combinations thereof as matching funds in any case where federal, local, or other funds have been made available on a matching basis. A loan or combination loan and grant shall not exceed fifty percent of the approved eligible project cost ~~((s))~~ for any single proposed project ~~((;-PROVIDED; That for purposes authorized by RCW 43.83B.300, 43.83B.310, and 43-.83B.385 the department of ecology may make a loan up to ninety percent of the total eligible project cost or combination loan and grant up to one hundred percent of the total single project cost and the grant portion for any single project shall not exceed twenty percent of the total project cost except that, for activities forecast to have fifty percent or less of normal seasonal water supplies, the grant portion for any single project or entity shall not exceed forty percent of the total project cost. No single entity shall receive more than ten percent of the total funds available for drought relief. These funds shall not be used for nonagricultural drought relief purposes unless there are no other capital budget funds available for these purposes. The total expenditures for nonagricultural drought relief purposes shall not exceed ten percent of the total funds available for drought relief purposes on March 15, 1988))~~. Any grant or grant portion of a combination loan and

grant from funds under RCW 43.83B.010 through 43.83B.110 for any single proposed project shall not exceed fifteen percent of the eligible project costs: PROVIDED, That the fifteen percent limitation established herein shall not be applicable to project commitments which the director or deputy director of the state department of ecology made to the bureau of reclamation of the United States department of interior for providing state funding at thirty-five percent of project costs during the period between August 1, 1974, and June 30, 1975.

~~((The department of social and health services is authorized to make grants of up to forty percent of the cost of construction of any eligible project necessitated by the 1977 drought conditions. Such grants may be made only to public bodies as defined in RCW 43.83B.050 for municipal and industrial water supply and distribution facilities.))~~

Sec. 8. Section 6, chapter 343, Laws of 1987 and RCW 75.20.150 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B-345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

Sec. 9. Section 7, chapter 343, Laws of 1987 and RCW 86.16.180 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B-345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

Sec. 10. Section 2, chapter 47, Laws of 1988 and RCW 90.54.022 are each amended to read as follows:

(1) The director of ecology shall contract with an independent fact-finding service for the purpose of consulting with all user groups and parties interested in Washington's water resource policy, including but not limited to:

- (a) The departments of ecology, agriculture, social and health services, fisheries, wildlife, and natural resources;
- (b) Municipal users of water;
- (c) Agricultural interests;
- (d) The governor's office;
- (e) Environmental interests;

- (f) Interests of industrial users of water;
- (g) Indian tribes;
- (h) Interests of public water utilities;
- (i) Interests of recreational uses other than fishing;
- (j) Public and private hydropower generating utilities;
- (k) Interests of sport and commercial fishing; and
- (l) Interests of the forest products industry.

(2) The fact-finding service shall consult with, obtain, and document the opinions of the interested parties, and may facilitate discussions between them on the fundamentals of water resource policy and the need, if any, to change or clarify the current policy for the state. The fact-finding service shall also identify and evaluate the clarity and consistency of state water allocation laws with the current policy based on those laws.

(3) The fact-finding service shall report its findings in a written report to the joint select committee established pursuant to RCW 90.54.024. The report shall be submitted to the joint select committee by June 30, 1988, unless the committee provides for an extension of the due date.

(4) The fact-finding service and the joint select committee shall consider the reports and recommendations of state and federal studies pertaining to allocation, augmentation, conservation, and efficient use of the water resources of this state, including but not limited to the department of ecology's instream resources and water allocation program review. By considering these studies, the fact-finding service and the joint select committee shall not duplicate the work already completed in such studies.

(5) Until July 1, 1989, or until the legislature has passed legislation based on recommendations from the joint select committee, whichever comes first, the department of ecology:

(a) Shall not amend or alter the current guidelines, standards, or criteria governing the instream flow and water allocation elements of the state water resources program established pursuant to chapters 90.22 and 90.54 RCW and set forth in chapters 173-500 to 173-596 WAC;

(b) Shall not adopt any water reservation under RCW 90.54.050, set forth in chapters 173-500 to 173-596 WAC, or the preferred alternative in the instream resources and water allocation environmental impact statement; and

(c) For any new application for surface water received under chapter 90.03 RCW after March 15, 1988, shall not issue any permanent appropriation permits and may only issue new temporary appropriation permits on streams by utilizing (i) the existing minimum or base flows adopted pursuant to chapters 90.54 and 90.22 RCW or (ii) the case-by-case process to maintain food fish and game fish populations as provided in RCW 75.20-.050. These water appropriations shall not reduce flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, recreational, water quality, other environmental values, and navigational values, as provided in

RCW 90.54.020 and chapters 90.03 and 90.22 RCW. These temporary permits shall be conditioned so that the appropriation may be altered based upon the enactment of legislation or adoption of regulations resulting from recommendations made pursuant to RCW 90.54.024 (3) and (4).

This subsection does not apply to any emergency water permits or transfers authorized under ~~((RCW 43.83B.300 through 43.83B.344))~~ section 3 of this 1989 act, and shall not affect any existing water rights established pursuant to law.

(6) The department of ecology shall provide staff support in the fact-finding process.

(7) This section shall expire on June 30, 1989.

Sec. 11. Section 5, chapter 343, Laws of 1987 and RCW 90.58.370 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B.345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

(1) Section 2, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.305;

(2) Section 3, chapter 1, Laws of 1977 ex. sess., section 2, chapter 343, Laws of 1987, section 3, chapter 46, Laws of 1988 and RCW 43.83B.310;

(3) Section 4, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.315;

(4) Section 5, chapter 1, Laws of 1977 ex. sess., section 3, chapter 343, Laws of 1987, section 11, chapter 523, Laws of 1987 and RCW 43.83B.320;

(5) Section 6, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.325;

(6) Section 7, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.330;

(7) Section 9, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.340;

(8) Section 8, chapter 343, Laws of 1987, section 4, chapter 46, Laws of 1988 and RCW 43.83B.342; and

(9) Section 9, chapter 343, Laws of 1987, section 5, chapter 46, Laws of 1988 and RCW 43.83B.344.

NEW SECTION. Sec. 13. Sections 1 through 6 of this act are each added to chapter 43.83B RCW.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 172

[Substitute Senate Bill No. 5348]

COMMERCIAL BOTTOM TRAWLING—HOOD CANAL AND PUGET SOUND— PARTIAL PROHIBITION

AN ACT Relating to the regulation of fishing; and adding a new section to chapter 75.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.12 RCW to read as follows:

Commercial bottom trawling for food fish and shellfish is unlawful in all areas of Hood Canal south of a line projected from Tala Point to Foul-weather Bluff and in Puget Sound south of a line projected from Foul-weather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island.

Passed the Senate March 8, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 173

[House Bill No. 1077]

CURB RAMPS—CONSTRUCTION REQUIREMENTS—HANDICAPPED ACCESS

AN ACT Relating to curb ramps for handicapped persons; and amending RCW 35.68.075.

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

Sec. 1. Section 1, chapter 83, Laws of 1973 as amended by section 1, chapter 137, Laws of 1977 ex. sess. and RCW 35.68.075 are each amended to read as follows:

(1) The standard for construction ~~((of curbs))~~ on any county road, or city(;) or town street, ~~((or any connecting street or town road))~~ for which curbs ~~((and sidewalks have been prescribed by the governing body of the county, town, or city having jurisdiction thereover))~~ in combination with

sidewalks, paths, or other pedestrian access ways are to be constructed, shall be not less than two ramps per lineal block on or near the crosswalks at intersections. Such ramps shall be at least thirty-six inches wide and so constructed as to allow reasonable access to the crosswalk for physically handicapped persons, without uniquely endangering blind persons.

(2) Standards set for curb ramping under subsection (1) of this section shall not apply to any curb existing upon enactment of this section but shall apply to all new curb construction and to all replacement curbs constructed at any point in a block which gives reasonable access to a crosswalk.

(3) Upon September 21, 1977, every ramp thereafter constructed under subsection (1) of this section, which serves one end of a crosswalk, shall be matched by another ramp at the other end of the crosswalk. However, no ramp shall be required at the other end of the crosswalk if there is no curb nor sidewalk at the other end of the crosswalk. Nor shall any matching ramp constructed pursuant to this subsection require a subsequent matching ramp.

Passed the House April 15, 1989.

Passed the Senate March 29, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 174

[Substitute Senate Bill No. 5350]

MENTAL HEALTH COMMISSIONERS—SUPERIOR COURT—APPOINTMENT AND DUTIES

AN ACT Relating to mental health commissioners; adding new sections to chapter 71.05 RCW; and adding a new section to chapter 71.34 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 71.05 RCW to read as follows:

In class A counties and counties of the first through ninth classes, the superior court may appoint the following persons to assist the superior court in disposing of its business: **PROVIDED**, That such positions may not be created without prior consent of the county legislative authority:

- (1) One or more attorneys to act as mental health commissioners; and
- (2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall

receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law.

NEW SECTION. Sec. 2. A new section is added to chapter 71.05 RCW to read as follows:

The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to section 1 of this act, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court.

NEW SECTION. Sec. 3. A new section is added to chapter 71.34 RCW to read as follows:

The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to section 1 of this act, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 18, 1989.

Passed the House April 14, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 175

[House Bill No. 1358]

ADMINISTRATIVE PROCEDURE ACT—MODIFICATIONS AND CONFORMING AMENDMENTS

AN ACT Relating to modifications in the Administrative Procedure Act and necessary conforming amendments; amending RCW 34.05.010, 34.05.030, 34.05.080, 34.05.220, 34.05.310, 34.05.315, 34.05.320, 34.05.335, 34.05.340, 34.05.350, 34.05.380, 34.05.413, 34.05.422, 34.05.425, 34.05.428, 34.05.440, 34.05.446, 34.05.449, 34.05.461, 34.05.464, 34.05.470, 34.05.473, 34.05.485, 34.05.488, 34.05.550, 34.05.566, 34.05.570, 34.05.574, 34.05.586, 34.08.040, 34.08.050, 34.12.020, 34.12.060, 34.12.120, 42.17.260, 2.10.200, 7.24.146, 7.68.110, 9.46.095, 9.46.140, 15.13.350, 15.14.080, 15.30.090, 15.32.584, 15.35.240, 15.36.115, 15.36.595, 15.37.080, 15.53.9036, 15.80.590, 16.49.454, 16.58.070, 16.65.445, 16.74.370, 17.10.080, 17.21.050, 18.08.450, 18.20.060, 18.27.104, 18.43.110, 18.46.050, 18.51.065, 18.54.050, 18.85.271, 18.85.343, 18.130.060, 18.130.100, 18.130.110, 18.130.190, 19.85.030, 19.85.040, 19.85.050, 24.34.020, 26.19.020, 26.23.110, 26.23.120, 28B.15.013, 28B.50.864, 28B.50.873, 28B.85.090, 28C.10.120, 35.68.076, 39.19.030, 40.07.020, 41.40.414, 41.40.420, 42.17.020, 42.17.170, 42.17.395, 42.17.397, 42.21.020, 42.30.140, 43.20A.605, 43.20B.340, 43.20B.430, 43.20B.630, 43.20B.740, 43.21B.110, 43.21B.160, 43.21B.180, 43.21B.240, 43.51.040, 43.51.340, 43.60A.070, 43.131.080, 46.10.220, 46.20.331, 48.03.070, 48.17.540, 48.62.050, 49.60.250, 49.60.260, 50.32.040, 50.32.090, 50.32.140, 51.48.131, 51.48.140, 66.08.150, 67.70.060, 68.05.310, 69.30.080, 70.38.115, 70.41.030, 70.41.130, 70.77.370, 70.90.210, 70.96A.090, 70.98.050, 70.98.130, 70.105B.070, 70.119A.040, 70.150.040, 71.12.500, 71A.10.050, 71A.10.060, 71A.10.070, 71A.16.040, 71A.18.040, 71A.20.080, 72.66.044, 74.08.080, 74.09.210, 74.13.036, 74.13.127, 74.15.130, 74.18.120, 74.20A.020, 74.20A.055, 74.20A.060, 74.20A.080, 74.20A.120, 74.20A.270, 74.20A.290, 74.21.100, 74.46.780, 75.20.130, 75.20.140, 76.04.630, 76.09.080, 76.09.220, 76.09.230, 78.44.170, 78.52.463, 78.52.470, 79.72.040, 79.90.105, 79.94.210, 80.50.075, 80.50.090, 80.50.100, 82.03.160, 82.03.180, 82.34.040, 84.26.130, 84.33.200, 90.14.200, 90.48.230, 90.58.120, 90.58.180, and 90.58.190; adding a new section to chapter 34.05 RCW; adding a new section to chapter 7.16 RCW; adding new sections to chapter 43.20A RCW; repealing RCW 18.20.070, 18.46.100, 34.04.115, 34.05.538, 69.30.090, 69.30.100, 70.41.140, 74.08.070, 74.09.536, and 74.12.270; providing effective dates; and declaring an emergency.

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

Sec. 1. Section 5, chapter 10, Laws of 1982 as amended by section 101, chapter 288, Laws of 1988 and RCW 34.05.010 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding((s))" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the ((issuance)) entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change

is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, ~~((the issuance, denial, or suspension of a license,))~~ the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision ~~((of the department of natural resources))~~ in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the ((grant)) issuance, denial, ((renewal;)) revocation, suspension, ((annulment, with-
drawal;)) or modification of a license.

(10) (a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(11) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(12) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(14) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or

administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.230, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(16) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(17) "Rule making" means the process for formulation and adoption of a rule.

(18) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company.

Sec. 2. Section 15, chapter 234, Laws of 1959 as last amended by section 103, chapter 288, Laws of 1988 and RCW 34.05.030 are each amended to read as follows:

(1) This chapter shall not apply to:

(a) The state militia, or

(b) The board of clemency and pardons, or

(c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through (~~34.05.594~~) 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the state personnel board, the higher education personnel board, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through ~~((34.05.494))~~ 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act.

Sec. 3. Section 108, chapter 288, Laws of 1988 and RCW 34.05.080 are each amended to read as follows:

(1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In ~~((any rule-making or))~~ an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. ~~((In an adjudicative proceeding, such))~~ The notice may be given by the presiding or reviewing officer involved in the proceeding. ~~((In a rule-making proceeding, the notice may be given in the notice of proposed rule-making.))~~

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor.

Sec. 4. Section 2, chapter 234, Laws of 1959 as last amended by section 202, chapter 288, Laws of 1988 and RCW 34.05.220 are each amended to read as follows:

(1) In addition to other rule-making requirements imposed by law:

(a) Each agency ~~((staff))~~ may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. ~~((Rules for the conduct of adjudicative proceedings shall be those which are))~~ If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

Sec. 5. Section 301, chapter 288, Laws of 1988 and RCW 34.05.310 are each amended to read as follows:

(1) In addition to seeking information by other methods, an agency (~~(may)~~), before publication of a notice of a proposed rule adoption under RCW 34.05.320, is encouraged to solicit comments from the public on a subject of possible rule making under active consideration within the agency, by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) Each agency may appoint committees to comment, before publication of a notice of proposed rule adoption under RCW 34.05.320, on the subject of a possible rule-making action under active consideration within the agency.

(3) Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.

Sec. 6. Section 302, chapter 288, Laws of 1988 and RCW 34.05.315 are each amended to read as follows:

(1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain (~~(a listing of the subject of each rule currently being prepared by the agency for proposal under RCW 34.05.320; the name and address of agency personnel responsible for the proposal; and an indication of the present status of the proposal)~~) the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until (~~(it is terminated)~~) the proposed rule is withdrawn under RCW 34.05.335(~~(3)~~) or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(~~(b)~~) (b) The subject of the proposed rule;

(~~(c)~~) (c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(~~(d)~~) (d) The place where written submissions about the proposed rule may be inspected;

(~~(e)~~) (e) The time during which written submissions will be accepted;

~~((e))~~ (f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, ~~((indexing;))~~ publication, and its effective date.

Sec. 7. Section 1, chapter 84, Laws of 1977 ex. sess. as last amended by section 303, chapter 288, Laws of 1988 and RCW 34.05.320 are each amended to read as follows:

(1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A summary of the rule and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make; and

(k) A copy of the small business economic impact statement, if applicable.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the ~~((statement))~~ notice on file and available for public inspection and shall forward three copies of the notice ~~((and the statement))~~ to the rules review committee.

(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person who has made a ~~((timely))~~ request to the agency for

a mailed copy of such notices. An agency may charge for the actual cost of providing individual mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing.

Sec. 8. Section 11, chapter 186, Laws of 1980 as amended by section 306, chapter 288, Laws of 1988 and RCW 34.05.335 are each amended to read as follows:

(1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the ~~((text of the rules))~~ proposed rule without ~~((filing the text))~~ refiling it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register.

Sec. 9. Section 307, chapter 288, Laws of 1988 and RCW 34.05.340 are each amended to read as follows:

(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may ~~((reject))~~ withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330.

Sec. 10. Section 3, chapter 234, Laws of 1959 as last amended by section 309, chapter 288, Laws of 1988 and RCW 34.05.350 are each amended to read as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not

be adopted in sequence unless conditions have changed or the agency has ((published)) filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

Sec. 11. Section 4, chapter 234, Laws of 1959 as last amended by section 315, chapter 288, Laws of 1988 and RCW 34.05.380 are each amended to read as follows:

(1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of filed rules open to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the ((rule)) order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it.

Sec. 12. Section 402, chapter 288, Laws of 1988 and RCW 34.05.413 are each amended to read as follows:

(1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application ((for an adjudicative proceeding)) be in writing and that it be filed at a specific address ((and)), in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

Sec. 13, Section 8, chapter 237, Laws of 1967 as last amended by section 405, chapter 288, Laws of 1988 and RCW 34.05.422 are each amended to read as follows:

(1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify((~~annul, withdraw, or amend~~)) a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Sec. 14. Section 406, chapter 288, Laws of 1988 and RCW 34.05.425 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

~~((7))~~ (8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual.

Sec. 15. Section 407, chapter 288, Laws of 1988 and RCW 34.05.428 are each amended to read as follows:

(1) A party to an ~~((adjudicatory))~~ adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

Sec. 16. Section 411, chapter 288, Laws of 1988 and RCW 34.05.440 are each amended to read as follows:

(1) ~~((An agency may provide forms for and, by rule, may provide procedures for and impose time limits upon, submission of requests for hearing.))~~ Failure of a party to ~~((request a hearing))~~ file an application for an adjudicative proceeding within the time limit or limits established by ((the)) statute or agency rule constitutes a ((waiver)) default and results in the loss of that party's right to ((hearing)) an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any. ((There shall be a minimum of twenty days from notice of an opportunity to request a hearing before a party is deemed to have waived his or her right to a hearing under this subsection.))

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

Sec. 17. Section 10, chapter 237, Laws of 1967 as amended by section 413, chapter 288, Laws of 1988 and RCW 34.05.446 are each amended to read as follows:

(1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In

exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) (~~(Subpoenas issued and)~~) Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under section 30(1) of this act.

(6) The subpoena powers created by this section shall be state-wide in effect.

~~((6))~~ (7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

Sec. 18. Section 414, chapter 288, Laws of 1988 and RCW 34.05.449 are each amended to read as follows:

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order (~~issued~~) entered by the presiding officer pursuant to applicable rules (~~adopted by the chief administrative law judge~~). A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

Sec. 19. Section 418, chapter 288, Laws of 1988 and RCW 34.05.461 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8) Initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(9) The presiding officer shall cause copies of (~~initial and final orders to be delivered to~~) the order to be served on each party and (~~to~~) the agency (~~head~~).

Sec. 20. Section 419, chapter 288, Laws of 1988 and RCW 34.05.464 are each amended to read as follows:

(1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files (~~exceptions to~~) a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As (~~provided~~) authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party.

Sec. 21. Section 421, chapter 288, Laws of 1988 and RCW 34.05.470 are each amended to read as follows:

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting

the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. ~~((The petition shall be deemed to have been denied if not disposed of within twenty days.~~

~~(3) No petition for reconsideration may stay the effectiveness of an order.~~

~~(4) The agency head may extend the time limits in this section for good cause, with due consideration that the rights of the parties will not be prejudiced by the extension and that extension will be in the public interest.))~~

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or ~~((an extension of time limits pursuant to))~~ a notice provided for in subsection ((4)) (3)(b) of this section is not subject to judicial review.

Sec. 22. Section 422, chapter 288, Laws of 1988 and RCW 34.05.473 are each amended to read as follows:

(1) Unless a later date is stated in an order or a stay is granted, an order is effective when ~~((signed))~~ entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479.

Sec. 23. Section 426, chapter 288, Laws of 1988 and RCW 34.05.485 are each amended to read as follows:

(1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall ~~((give))~~ serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is ~~((a proposed))~~ an initial order. If no review is taken of the ~~((proposed))~~ initial order as authorized by RCW 34.05.488 and 34.05.491, the ~~((proposed))~~ initial order shall be the final order.

Sec. 24. Section 427, chapter 288, Laws of 1988 and RCW 34.05.488 are each amended to read as follows:

Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after ~~((furnishing))~~ service of the written statement required by RCW 34.05.485(3).

Sec. 25. Section 511, chapter 288, Laws of 1988 and RCW 34.05.550 are each amended to read as follows:

(1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy ~~((during the pendency of judicial review))~~.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms.

Sec. 26. Section 515, chapter 288, Laws of 1988 and RCW 34.05.566 are each amended to read as follows:

(1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies ~~((for))~~ of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) ~~((As provided by RCW 34.05.570; or~~

~~ce))~~ In accordance with any ~~((other))~~ provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record.

Sec. 27. Section 13, chapter 234, Laws of 1959 as last amended by section 516, chapter 288, Laws of 1988 and RCW 34.05.570 are each amended to read as follows:

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to ~~((RCW 34.05.538))~~ this subsection or ((by review of other agency action)) in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. ~~((The agency shall be made a party to the proceeding.))~~ The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(c) In a ~~((declaratory judgment))~~ proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that it violates constitutional provisions ~~((or))~~ exceeds the statutory authority of the agency ((or)), was adopted without compliance with statutory rule-making procedures, or could not conceivably have been the product of a rational decision-maker.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order ~~((, other than a rule,))~~ is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) ~~((The persons entering the order were subject to disqualification))~~ A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

Sec. 28. Section 517, chapter 288, Laws of 1988 and RCW 34.05.574 are each amended to read as follows:

(1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, (~~affirm or~~) set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.

Sec. 29. Section 520, chapter 288, Laws of 1988 and RCW 34.05.586 are each amended to read as follows:

(1) ~~((In a proceeding for civil enforcement))~~ Except as expressly provided in this section, a respondent may ((only)) not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a) ((or), (b), (c), (d), (g), or (h))~~((The court may only consider issues and receive evidence within the limitations provided by RCW 34.05.554, 34.05.558, and 34.05.562)), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;~~

(b) That the ~~((rule or order does not apply to the party or that the party has not violated the rule or order, and))~~ interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may ~~((consider new issues or))~~ take new evidence.

NEW SECTION. Sec. 30. A new section is added to chapter 34.05 RCW to read as follows:

(1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590.

Sec. 31. Section 5, chapter 240, Laws of 1977 ex. sess. and RCW 34-.08.040 are each amended to read as follows:

The publication of any information in the Washington State Register shall be deemed to be official notice of such information, and publication in the register of such information and materials shall be certified to be the true and correct copy of such rules or other information as filed in the code reviser's office. The code reviser shall certify, to any court of record, the publication of any notice or information, and attached to such certification shall be the agency's declaration of compliance with the provisions of the

Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter ~~((34.04))~~ 34.05 RCW) ~~((or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate)), and this chapter.~~

Sec. 32. Section 6, chapter 240, Laws of 1977 ex. sess. and RCW 34.08.050 are each amended to read as follows:

For the purposes of the state register and this chapter, an institution of higher education, as defined in RCW ~~((28B.19.020(+))~~ 34.05.010, shall be considered to be a state agency.

Sec. 33. Section 2, chapter 67, Laws of 1981 as amended by section 1, chapter 189, Laws of 1982 and RCW 34.12.020 are each amended to read as follows:

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

(1) "Office" means the office of administrative hearings.

(2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

(3) "Hearing" means ~~((a "contested case"))~~ an adjudicative proceeding within the meaning of RCW ~~((34.04.010(3))~~ 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to ~~((adjudicate contested cases))~~ conduct adjudicative proceedings, except those in the legislative or judicial branches, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the state personnel board, the higher education personnel board, the public employment relations commission, the personnel appeals board, and the board of tax appeals.

Sec. 34. Section 6, chapter 67, Laws of 1981 as last amended by section 7, chapter 141, Laws of 1984 and RCW 34.12.060 are each amended to read as follows:

When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW ~~((34.04.110))~~ 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing conducted under RCW 43.43.090.

Sec. 35. Section 12, chapter 67, Laws of 1981 and RCW 34.12.120 are each amended to read as follows:

~~((1))~~ The governor shall appoint ~~((a))~~ the chief administrative law judge ~~((to take office no later than the thirtieth day after April 25, 1981. In the interim period between appointment and July 1, 1982, the chief administrative law judge shall specifically plan and administer as efficiently as possible the initial implementation of this chapter and of RCW 34.04.020 and 34.04.022 as now or hereafter amended, and shall develop and submit a plan and budget for financing the office after July 1, 1982.~~

~~(2) During this interim period, the chief administrative law judge may hire support staff and purchase facilities and equipment necessary to the task).~~

Sec. 36. Section 26, chapter 1, Laws of 1973 as last amended by section 3, chapter 403, Laws of 1987 and RCW 42.17.260 are each amended to read as follows:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (5) of this section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.315, an agency shall delete identifying details in a manner consistent with RCW 42.17.310 and 42.17.315 when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is

asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) ~~((Am))~~ A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(4) By July 1, 1990, each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(5) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

~~((5))~~ (6) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 37. Section 20, chapter 267, Laws of 1971 ex. sess. and RCW 2.10.200 are each amended to read as follows:

A hearing shall be held by ~~((members of the retirement board))~~ the department of retirement systems, or ~~((its duty))~~ an authorized representative(s), in the county of the residence of the claimant at a time and place designated by the ~~((retirement board))~~ director. Such hearings shall be de novo and shall conform to the provisions of chapter ~~((34.04))~~ 34.05 RCW~~((, as now or hereafter amended)).~~ The retirement ~~((board shall be entitled to))~~ system may appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the ~~((retirement board shall be))~~ director is governed by the provisions of chapter ~~((34.04 RCW as now law or hereafter amended))~~ 34.05 RCW.

NEW SECTION. Sec. 38. A new section is added to chapter 7.16 RCW to read as follows:

This chapter does not apply to state agency action reviewable under chapter 34.05 RCW.

Sec. 39. Section 2, chapter 14, Laws of 1937 and RCW 7.24.146 are each amended to read as follows:

This chapter shall apply to all actions and proceedings now pending in the courts of record of the state of Washington seeking relief under the terms of the uniform declaratory judgments act [this chapter]; and all judgments heretofore rendered; and all such actions and proceedings heretofore instituted and now pending in said courts of record of the state of Washington, seeking such relief, are hereby validated, and the respective courts of record in said actions shall have jurisdiction and power to proceed in said actions and to declare the rights, status and other legal relations sought to have been declared in said pending actions and proceedings in accordance with the provisions of said chapter. This chapter does not apply to state agency action reviewable under chapter 34.05 RCW.

Sec. 40. Section 11, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 7, chapter 302, Laws of 1977 ex. sess. and RCW 7.68-.110 are each amended to read as follows:

The provisions contained in chapter 51.52 RCW (~~as now or hereafter amended~~) relating to appeals shall govern appeals under this chapter: PROVIDED, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: PROVIDED FURTHER, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW (~~34.04.130 and 34.04.140 as now or hereafter amended~~) 34.05.510 through 34.05.598, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant.

Sec. 41. Section 17, chapter 139, Laws of 1981 and RCW 9.46.095 are each amended to read as follows:

No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from (~~a contested case of~~) an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title.

Sec. 42. Section 14, chapter 218, Laws of 1973 1st ex. sess. as last amended by section 16, chapter 67, Laws of 1981 and RCW 9.46.140 are each amended to read as follows:

(1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or

upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW (~~34.04.090 (6) and (8), 34.04.100, and 34.04.105~~) 34.05.446, 34.05.449, and 34.05.452.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter (~~34.04~~) 34.05 RCW.

Sec. 43. Section 11, chapter 33, Laws of 1971 ex. sess. and RCW 15.13.350 are each amended to read as follows:

The director may, whenever he determines that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter (~~34.04 RCW, as enacted or hereafter amended, concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke any license issued or which may be issued under the provisions of this chapter.

Sec. 44. Section 8, chapter 83, Laws of 1961 and RCW 15.14.080 are each amended to read as follows:

The director may, subsequent to obtaining real property in a remote area for the purpose of establishing a Washington state crop improvement nursery, establish a planting stock area for the purpose of maintaining genetic qualities of planting stock and their freedom from plant pests. Such a planting stock area may be established only in areas where no commercial production of the planting stock to be planted in such Washington state crop improvement nursery is planted. No planting stock area shall be established until the director has published in a newspaper of general circulation, his intent to establish such planting stock area in the county or counties where it is to be located, once each week for three successive weeks, and that a public hearing will be held, within ten days subsequent to the last publication of such notice, for the purpose of determining the feasibility of establishing such a planting stock area. Such hearings shall be

subject in addition to the foregoing requirements, to the provisions of chapter (~~34.04 RCW as enacted or hereafter amended concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings. The director may in addition to the notice by publication use any other media to inform the public of his intent to establish a planting stock area.

Sec. 45. Section 9, chapter 29, Laws of 1961 and RCW 15.30.090 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter (~~34.04 RCW, concerning contested cases, as enacted or hereafter amended~~) 34.05 RCW concerning adjudicative proceedings.

Sec. 46. Section 15.32.584, chapter 11, Laws of 1961 as amended by section 8, chapter 58, Laws of 1963 and RCW 15.32.584 are each amended to read as follows:

The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall be renewed on or before January 1, 1964 and every two years thereafter. The director is authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of chapter (~~34.04 RCW as enacted or hereafter amended; concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings.

Sec. 47. Section 24, chapter 230, Laws of 1971 ex. sess. as amended by section 1, chapter 164, Laws of 1987 and RCW 15.35.240 are each amended to read as follows:

The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter (~~34.04 RCW; concerning contested cases, as enacted or hereafter amended~~) 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 24.32 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued.

Sec. 48. Section 1, chapter 226, Laws of 1984 and RCW 15.36.115 are each amended to read as follows:

(1) If the results of an antibiotic or pesticide residue test are above the actionable level as determined by procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a ~~((contested case))~~ hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters ~~((34.04))~~ 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter ~~((34.04))~~ 34.05 RCW. Tests performed for antibiotic or pesticide residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic or pesticide residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic or pesticide residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic or pesticide residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues.

Sec. 49. Section 19, chapter 203, Laws of 1986 and RCW 15.36.595 are each amended to read as follows:

(1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established by RCW 15.36.030 or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a ~~((contested case))~~ hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters ~~((34.04))~~ 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter ~~((34.04))~~ 34.05 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing ~~((and/or))~~ or marketing research, or both. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department.

Sec. 50. Section 8, chapter 285, Laws of 1961 and RCW 15.37.080 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter ~~((34.04 RCW, concerning contested cases, as enacted or hereafter amended))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 51. Section 15, chapter 31, Laws of 1965 ex. sess. as amended by section 6, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9036 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of any registration provided for in this chapter shall be subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW (the Administrative Procedure Act) concerning ~~((contested cases, as enacted or hereafter amended))~~ adjudicative proceedings.

Sec. 52. Section 30, chapter 100, Laws of 1969 ex. sess. and RCW 15.80.590 are each amended to read as follows:

The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter ~~((34.04))~~ 34.05 RCW (Administrative Procedure Act) ~~((as enacted or hereafter amended, concerning contested cases))~~ concerning adjudicative proceedings.

Sec. 53. Section 2, chapter 91, Laws of 1961 as amended by section 2, chapter 77, Laws of 1987 and RCW 16.49.454 are each amended to read as follows:

No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment. In addition to the requirements under RCW 16.49.440, applications to operate custom slaughtering establishments shall contain the following:

- (1) The location of the facility to be used.
- (2) The day or days of intended operation.
- (3) The distance to the closest official establishment.
- (4) Whether the facility already exists or is to be constructed.
- (5) Any other matters that the director may require.

Upon receipt of such application the director shall provide for a hearing to be held in the area where the applicant intends to operate a custom slaughtering establishment. Such hearing shall be subject to the provisions of chapter ~~((34.04 RCW as enacted or hereafter amended concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings. Upon the director's determination that such a custom slaughtering establishment is necessary in the area applied for and that the applicant has satisfied all other requirements of this chapter relating to custom slaughtering establishments including minimum facility requirements as prescribed by the director, the director shall issue a limited license to such applicant to operate such an establishment. When and if an official establishment is located and operated in the area, the director may deny renewal of the limited license subject to a hearing.

Sec. 54. Section 7, chapter 181, Laws of 1971 ex. sess. and RCW 16.58.070 are each amended to read as follows:

The director is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter ~~((34.04))~~ 34.05 RCW if he finds that there has been a failure to comply with any requirement of this chapter or rules and regulations adopted hereunder. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter ~~((34.04 RCW concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 55. Section 7, chapter 182, Laws of 1961 and RCW 16.65.445 are each amended to read as follows:

The director shall hold public hearings upon a proposal to promulgate any new or amended regulations and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other ~~((contested case))~~ adjudicative proceeding, and shall comply in all respects with chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~ the Administrative Procedure Act ~~((as now enacted or hereafter amended))~~.

Sec. 56. Section 36, chapter 146, Laws of 1969 ex. sess. and RCW 16.74.370 are each amended to read as follows:

If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the director, such person may request a hearing ~~((as provided for contested cases))~~ under chapter ~~((34.04 RCW, as now or hereafter amended))~~ 34.05 RCW, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business or to the superior court for Thurston county.

Sec. 57. Section 8, chapter 113, Laws of 1969 ex. sess. as last amended by section 8, chapter 438, Laws of 1987 and RCW 17.10.080 are each amended to read as follows:

(1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) At the hearing any person may request the inclusion of any plant to the lists to be adopted by the state noxious weed control board. Any hearing held pursuant to this section shall conform to the Administrative Procedure

Act, chapter ((34.04)) 34.05 RCW: PROVIDED, That adding a weed to or deleting a weed from the list shall constitute a substantial change as provided for in RCW ((34.04.025(2))) 34.05.340.

The state noxious weed control board shall send a copy of the lists to each activated county noxious weed control board, to each regional noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board. The record of hearing shall include the written findings of the board for the inclusion of each plant on the list. Such findings shall be made available upon request to any interested person.

Sec. 58. Section 5, chapter 249, Laws of 1961 as amended by section 4, chapter 158, Laws of 1985 and RCW 17.21.050 are each amended to read as follows:

All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license issued under the provisions of this chapter shall be subject to the provisions of chapter ~~((34.04 RCW as enacted or hereafter amended, concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 59. Section 16, chapter 37, Laws of 1985 and RCW 18.08.450 are each amended to read as follows:

(1) The board may revoke or suspend a certificate of registration or a certificate of authorization to practice architecture in this state, or otherwise discipline a registrant or person authorized to practice architecture, as provided in this chapter.

(2) Proceedings for the revocation, suspension, refusal to issue, or imposition of a monetary fine may be initiated by the board on its own motion based on the complaint of any person. A copy of the charge or charges, along with a notice of the time and place of the hearing before the board shall be served on the registrant as provided for in chapter ~~((34.04))~~ 34.05 RCW.

(3) All procedures related to hearings on such charges shall be in accordance with ~~((rules for a contested case in chapter 34.04))~~ provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

(4) If, after such hearing, the majority of the board vote in favor of finding the registrant guilty, the board shall take such disciplinary action as it deems appropriate under this chapter.

(5) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

Sec. 60. Section 6, chapter 253, Laws of 1957 as amended by section 5, chapter 213, Laws of 1985 and RCW 18.20.060 are each amended to read as follows:

The department or the department and authorized department jointly, as the case may be, ~~((after notice and opportunity for hearing to the applicant or license holder, is authorized to))~~ may deny, suspend, or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the ~~((regulations promulgated pursuant thereto:~~

~~Notice of denial, suspension, or revocation shall be given by registered mail, or by personal service in the manner of service of summons in a civil action, which notice shall set forth the particular reasons for the proposed denial, suspension or revocation and shall fix a date not less than twenty days from the date of mailing or service, during which the applicant or licensee may in writing request a hearing on the denial, suspension, or revocation. If the applicant or licensee fails to request a hearing within that time, the department or the department and authorized department jointly may deny, suspend or revoke the license without further notice or action. The order of denial, suspension or revocation shall be mailed to the applicant or license holder by registered mail or personally served on him in the manner of service of summons in a civil action.~~

~~If the applicant or licensee requests a hearing within such time the department shall fix a time for the hearing and shall give the applicant or licensee or such person's attorney, written notice thereof.~~

~~The procedure governing hearings shall be in accordance with rules promulgated by the department and such hearing shall be informal and summary, except that a record shall be kept of the testimony taken on behalf of the applicant or licensee and the department, which need not be transcribed unless an appeal is taken therefrom. The department shall render its decision within a reasonable time after the hearing and issue its order, which shall be served on the applicant or licensee or such person's attorney, and the order shall become final unless an appeal is taken therefrom))~~ rules adopted under it. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 61. Section 5, chapter 362, Laws of 1987 and RCW 18.27.104 are each amended to read as follows:

(1) If, upon investigation, the director or the director's designee has probable cause to believe that a person holding a registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor who is not otherwise exempted from this chapter, has violated RCW 18.27.100 by unlawfully advertising for work covered by this chapter in an alphabetical or classified directory, the department may issue a citation ~~((under chapter 34.04 RCW))~~ containing an order of correction. Such order shall require the violator to cease the unlawful advertising.

(2) If the person to whom a citation is issued under subsection (1) of this section notifies the department in writing that he or she contests the citation, the department shall afford an opportunity for ~~((a hearing,))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, within thirty days after receiving the notification.

Sec. 62. Section 14, chapter 283, Laws of 1947 as last amended by section 3, chapter 102, Laws of 1986 and RCW 18.43.110 are each amended to read as follows:

The board shall have the exclusive power to fine and reprimand the registrant and suspend or revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or

Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All procedures related to hearings on such charges shall be in accordance with ~~((rules for a contested case, chapter 34.04))~~ provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

If, after such hearing, a majority of the board vote in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.

Fines imposed by the board shall not exceed one thousand dollars for each offense.

In addition to the imposition of civil penalties under this section, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120.

Sec. 63. Section 6, chapter 168, Laws of 1951 as amended by section 9, chapter 213, Laws of 1985 and RCW 18.46.050 are each amended to read as follows:

The department (~~((after notice and opportunity for hearing to the applicant or licensee is authorized to))~~) may deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter or the rules adopted under it.

~~((Notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty days from the date of mailing or service at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of such hearing or upon default of the applicant or licensee, the department shall make a determination specifying its findings and conclusions. A copy of the determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending, or denying the license or application shall become final thirty days after it is mailed or served, unless the applicant or licensee, within such thirty day period, appeals the decision.~~

~~The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party:))~~ Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 64. Section 16, chapter 99, Laws of 1975 1st ex. sess. as amended by section 19, chapter 2, Laws of 1981 1st ex. sess. and RCW 18.51.065 are each amended to read as follows:

~~((All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.04 RCW:))~~ Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. Section 96 of this act governs notice of a civil fine and provides the right to an adjudicative proceeding.

Sec. 65. Section 5, chapter 25, Laws of 1963 as last amended by section 48, chapter 158, Laws of 1979 and RCW 18.54.050 are each amended to read as follows:

The board must meet at least once yearly or more frequently upon call of the chairman or the director of licensing at such times and places as the chairman or the director of licensing may designate by giving three days' notice or as otherwise required by ~~((the administrative procedure act, chapter 34.04 RCW as now or hereafter amended))~~ RCW 42.30.075.

Sec. 66. Section 25, chapter 222, Laws of 1951 as last amended by section 8, chapter 205, Laws of 1988 and RCW 18.85.271 are each amended to read as follows:

If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may impose sanctions authorized under RCW 18.85.040. In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in ~~((a contested case))~~ an adjudicative proceeding, whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision.

Sec. 67. Section 2, chapter 261, Laws of 1977 ex. sess. and RCW 18.85.343 are each amended to read as follows:

(1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether or not the order will become permanent.

At the time the temporary cease and desist order is served, the licensee shall be notified that he is entitled to request a hearing for the sole purpose of determining whether or not the public interest imperatively requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether or not the order will become

permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the licensee requests a later hearing. A licensee may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as ((~~a contested case~~)) an adjudicative proceeding.

Sec. 68. Section 6, chapter 279, Laws of 1984 as amended by section 3, chapter 150, Laws of 1987 and RCW 18.130.060 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the director has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all 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 members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter ((~~34.04~~)) 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency ((~~hearing or contested case~~)) adjudicative proceeding as authorized by RCW ((~~34.04.105(4)~~)) 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority.

Sec. 69. Section 10, chapter 279, Laws of 1984 and RCW 18.130.100 are each amended to read as follows:

The procedures governing ((~~contested cases~~)) adjudicative proceedings before agencies under chapter ((~~34.04~~)) 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The

disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter (~~(34.04)~~) 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions.

Sec. 70. Section 11, chapter 279, Laws of 1984 and RCW 18.130.110 are each amended to read as follows:

(1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW (~~(34.04.120)~~), the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.17 RCW.

Sec. 71. Section 19, chapter 279, Laws of 1984 as last amended by section 7, chapter 150, Laws of 1987 and RCW 18.130.190 are each amended to read as follows:

(1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.130.050. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed

practice and may be enforced by civil contempt. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

Sec. 72. Section 3, chapter 6, Laws of 1982 and RCW 19.85.030 are each amended to read as follows:

In the adoption of any rule pursuant to RCW (~~34.04.025~~ which) 34.05.320 that will have an economic impact on more than twenty percent of all industries, or more than ten percent of any one industry, the adopting agency:

(1) Shall reduce the economic impact of the rule on small business by doing one or more of the following when it is legal and feasible in meeting the stated objective of the statutes which are the basis of the proposed rule:

(a) Establish differing compliance or reporting requirements or timetables for small businesses;

(b) Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses;

(c) Establish performance rather than design standards;

(d) Exempt small businesses from any or all requirements of the rule;

(2) Shall prepare a small business economic impact statement in accordance with RCW 19.85.040 and file such statement with the code reviser along with the notice required under RCW (~~34.04.025~~) 34.05.320;

(3) May request from the (~~office of small~~) business assistance center available statistics which the agency can use in the preparation of the small business economic impact statement.

Sec. 73. Section 4, chapter 6, Laws of 1982 and RCW : 9.85.040 are each amended to read as follows:

A small business economic impact statement shall analyze the costs of compliance for businesses required to comply with the provisions of a rule

adopted pursuant to RCW (~~(34.04.025)~~) 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs, and compare to the greatest extent possible the cost of compliance for small business with the cost of compliance for the ten percent of firms which are the largest businesses required to comply with the proposed new or amendatory rules. The small business economic impact statement shall use one or more of the following as a basis for comparing costs:

- (1) Cost per employee;
- (2) Cost per hour of labor;
- (3) Cost per one hundred dollars of sales;
- (4) Any combination of (1), (2), or (3).

Sec. 74. Section 5, chapter 6, Laws of 1982 and RCW 19.85.050 are each amended to read as follows:

(1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and
- (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who

make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW ((~~34.04.026(1)(a) or 34.04.026(1)(b)~~)) 34.05.360, and shall invite public comment upon the rule.

Sec. 75. Section 2, chapter 187, Laws of 1967 and RCW 24.34.020 are each amended to read as follows:

If the attorney general (~~(shall have)~~) has reason to believe that any such association as provided for in RCW 24.34.010 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

Such hearing, and any appeal which may be made from such hearing, shall be conducted and held subject to and in conformance with the provisions for (~~(contested cases)~~) adjudicative proceedings and judicial review in chapter (~~(34.04)~~) 34.05 RCW, (~~(f)~~) the Administrative Procedure Act(~~(; as now enacted or hereafter amended)~~).

Sec. 76. Section 3, chapter 275, Laws of 1988 and RCW 26.19.020 are each amended to read as follows:

(1) (a) Except as provided in (b) of this subsection, in any proceeding under this title or Title 13 or 74 RCW in which child support is at issue, support shall be determined and ordered according to the child support schedule adopted pursuant to RCW 26.19.040.

(b) If approved by a majority vote of the superior court judges of a county, the superior court may adopt by local court rule an economic table that shall be used by the superior court of that county, instead of the economic table adopted by the commission, to determine the appropriate amount of child support. The economic table adopted by the superior court shall not vary by more than twenty-five percent from the economic table adopted by the commission and shall not vary the economic table for combined monthly net income of two thousand five hundred dollars or less.

(2) An order for child support shall be supported by written findings of fact upon which the support determination is based.

(3) All income and resources of each parent's household shall be disclosed and shall be considered by the court or (~~(administrative law judge)~~) the presiding or reviewing officer when the child support obligation of each parent is determined.

(4) Worksheets in the form approved by the commission shall be completed and filed in every proceeding in which child support is determined. Variations of the worksheets shall not be accepted.

(5) Unless specific reasons for deviation are set forth in the written findings of fact or order and are supported by the evidence, the court or ~~((administrative law judge))~~ the presiding or reviewing officer shall order each parent to pay the amount of child support determined using the standard calculation.

(6) The court or ~~((administrative law judge))~~ the presiding or reviewing officer shall review the worksheets and the order for adequacy of the reasons set forth for any deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Reasons that may support a deviation from the standard calculation include: Possession of wealth, shared living arrangements, extraordinary debts that have not been voluntarily incurred, extraordinarily high income of a child, a significant disparity of the living costs of the parents due to conditions beyond their control, and special needs of disabled children. A deviation may be supported by tax planning considerations only if the child would not receive a lesser economic benefit. Agreement of the parties, by itself, is not adequate reason for deviation.

Sec. 77. Section 11, chapter 435, Laws of 1987 and RCW 26.23.110 are each amended to read as follows:

The department shall establish, by regulation, a process that may be utilized when a support order does not state the obligation to pay current and future support as a fixed dollar amount, or if there is a dispute about the amount of the support debt owed under a support order. This process is authorized in order to facilitate enforcement of the support order, and is intended to implement and effectuate the terms of the order rather than to modify those terms.

The process shall provide for a notice to be served on the responsible parent by personal service or any form of mailing requiring a return receipt. The notice shall contain an initial finding of the amount of current and future support that should be paid and/or the amount of the support debt owed under the support order. ~~((A copy of the notice of hearing shall be mailed to the person to whom support is payable under the support order.))~~

The notice shall direct the responsible parent to appear and show cause ~~((at a hearing held by the department))~~ in an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, why the amount of current and future support to be paid and/or the amount of the support debt is incorrect and should not be ordered. The notice shall provide that the responsible parent has twenty days from the date of the service of the notice to ~~((request an administrative hearing))~~ file an application for an adjudicative proceeding or initiate an action in superior court. If the responsible parent does not ~~((request a hearing))~~ file an application for an adjudicative proceeding or initiate an action in superior court, the amount

of current and future support and/or the amount of the support debt stated in the notice shall be subject to collection action.

If the responsible parent does not initiate such an action in superior court, and serve notice of the action on the department within the twenty-day period, the responsible parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in chapter 34.05 RCW ((34.04.130)).

The ~~((administrative hearing))~~ adjudicative proceeding shall be ~~((a contested hearing under chapter 34.04 RCW and shall be conducted in accordance with the rules and regulations))~~ held pursuant to this section, chapter 34.05 RCW, and rules adopted by the department ((and the office of administrative hearings)). A copy of the notice of hearing shall be mailed to the person to whom support is payable under the support order.

An ~~((administrative))~~ adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the amounts established in the order were based. The amount of current and future support and/or the amount of the support debt determined under this section shall be subject to collection under this chapter and other applicable state statutes.

The regulation shall also provide for an annual review of the support order if either the office of support enforcement or the responsible parent requests such a review.

Sec. 78. Section 12, chapter 435, Laws of 1987 and RCW 26.23.120 are each amended to read as follows:

(1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the office of support enforcement, or under chapter 74.20 RCW shall be private and confidential and shall only be subject to public disclosure as provided in this section.

(2) The secretary of the department of social and health services shall adopt rules which specify the individuals or agencies to whom this information and these records may be disclosed, the purposes for which the information may be disclosed, and the procedures to obtain the information or records. The rules adopted under this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

(a) When authorized or required by federal statute or regulation governing the support enforcement program;

(b) To the person the subject of the records or information, unless the information is exempt from disclosure under RCW 42.17.310;

(c) To government agencies, whether state, local, or federal, and including law enforcement agencies, prosecuting agencies, and the executive

branch, if the records or information are needed for child support enforcement purposes;

(d) To the parties in a judicial or (~~formal administrative~~) adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to a court order for support for purposes relating to the enforcement or modification of the order;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the office of support enforcement as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(3) Prior to disclosing address information to a party to a child custody order, a notice shall be mailed, if appropriate under the circumstances, to the last known address of the party whose address has been requested. The notice shall advise the party that a request for disclosure has been made and will be complied with unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child.

(4) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(5). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

(5) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 79. Section 3, chapter 273, Laws of 1971 ex. sess. as last amended by section 63, chapter 370, Laws of 1985 and RCW 28B.15.013 are each amended to read as follows:

(1) The establishment of a new domicile in the state of Washington by a person formerly domiciled in another state has occurred if such person is physically present in Washington primarily for purposes other than educational and can show satisfactory proof that such person is without a present

intention to return to such other state or to acquire a domicile at some other place outside of Washington.

(2) Unless proven to the contrary it shall be presumed that:

(a) The domicile of any person shall be determined according to the individual's situation and circumstances rather than by marital status or sex.

(b) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington; any resident dependent student who remains in this state when such student's parents, having theretofore been domiciled in this state for a period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution, remove from this state, shall be entitled to continued classification as a resident student so long as such student's attendance (except summer sessions) at an institution in this state is continuous.

(3) To aid the institution in deciding whether a student, parent, legally appointed guardian or the person having legal custody of a student is domiciled in the state of Washington primarily for purposes other than educational, the rules and regulations adopted by the higher education coordinating board shall include but not be limited to the following:

(a) Registration or payment of Washington taxes or fees on a motor vehicle, mobile home, travel trailer, boat, or any other item of personal property owned or used by the person for which state registration or the payment of a state tax or fee is required will be a factor in considering evidence of the establishment of a Washington domicile.

(b) Permanent full time employment in Washington by a person will be a factor in considering the establishment of a Washington domicile.

(c) Registration to vote for state officials in Washington will be a factor in considering the establishment of a Washington domicile.

(4) After a student has registered at an institution such student's classification shall remain unchanged in the absence of satisfactory evidence to the contrary. A student wishing to apply for a change in classification shall reduce such evidence to writing and file it with the institution. In any case involving an application for a change from nonresident to resident status, the burden of proof shall rest with the applicant. Any change in classification, either nonresident to resident, or the reverse, shall be based upon written evidence maintained in the files of the institution and, if approved, shall take effect the semester or quarter such evidence was filed with the institution: PROVIDED, That applications for a change in classification shall be accepted up to the thirtieth calendar day following the first day of

instruction of the quarter or semester for which application is made. (~~Any determination of classification shall be considered a ruling on a contested case subject to court review only under procedures prescribed by chapter 28B.19 RCW.~~)

Sec. 80. Section 42, chapter 283, Laws of 1969 ex. sess. as amended by section 24, chapter 62, Laws of 1973 and RCW 28B.50.864 are each amended to read as follows:

Any faculty member dismissed pursuant to RCW 28B.50.850 through 28B.50.869 shall have a right to appeal the final decision of the appointing authority in accordance with RCW (~~28B.19.150 as now or hereafter amended~~) 34.05.510 through 34.05.598.

Sec. 81. Section 1, chapter 13, Laws of 1981 2nd ex. sess. and RCW 28B.50.873 are each amended to read as follows:

The state board for community college education may declare a financial emergency under the following conditions: (1) Reduction of allotments by the governor pursuant to RCW 43.88.110(2), or (2) reduction by the legislature from one biennium to the next or within a biennium of appropriated funds based on constant dollars using the implicit price deflator. When a district board of trustees determines that a reduction in force of tenured or probationary faculty members may be necessary due to financial emergency as declared by the state board, written notice of the reduction in force and separation from employment shall be given the faculty members so affected by the president or district president as the case may be. Said notice shall clearly indicate that separation is not due to the job performance of the employee and hence is without prejudice to such employee and need only state in addition the basis for the reduction in force as one or more of the reasons enumerated in subsections (1) and (2) of this section.

Said tenured or probationary faculty members will have a right to request a formal hearing when being dismissed pursuant to subsections (1) and (2) of this section. The only issue to be determined shall be whether under the applicable policies, rules or collective bargaining agreement the particular faculty member or members advised of severance are the proper ones to be terminated. Said hearing shall be initiated by filing a written request therefor with the president or district president, as the case may be, within ten days after issuance of such notice. At such formal hearing the tenure review committee provided for in RCW 28B.50.863 may observe the formal hearing procedure and after the conclusion of such hearing offer its recommended decision for consideration by the hearing officer. Failure to timely request such a hearing shall cause separation from service of such faculty members so notified on the effective date as stated in the notice, regardless of the duration of any individual employment contract.

~~((Said))~~ The hearing required by this section shall be ((a formal hearing)) an adjudicative proceeding pursuant to chapter 34.05 RCW, ((28B.19.120)) the Administrative Procedure Act, conducted by a hearing officer

appointed by the board of trustees and shall be concluded by the hearing officer within sixty days after written notice of the reduction in force has been issued. Ten days written notice of the formal hearing will be given to faculty members who have requested such a hearing by the president or district president as the case may be. The hearing officer within ten days after conclusion of such formal hearing shall prepare findings, conclusions of law and a recommended decision which shall be forwarded to the board of trustees for its final action thereon. Any such determination by the hearing officer under this section shall not be subject to further tenure review committee action as otherwise provided in this chapter.

Notwithstanding any other provision of this section, at the time of a faculty member or members request for formal hearing said faculty member or members may ask for participation in the choosing of the hearing officer in the manner provided in RCW 28A.58.455(4), said employee therein being a faculty member for the purposes hereof and said board of directors therein being the board of trustees for the purposes hereof: PROVIDED, That where there is more than one faculty member affected by the board of trustees' reduction in force such faculty members requesting hearing must act collectively in making such request: PROVIDED FURTHER, That costs incurred for the services and expenses of such hearing officer shall be shared equally by the community college and the faculty member or faculty members requesting hearing.

When more than one faculty member is notified of termination because of a reduction in force as provided in this section, hearings for all such faculty members requesting formal hearing shall be consolidated and only one such hearing for the affected faculty members shall be held, and such consolidated hearing shall be concluded within the time frame set forth herein.

Separation from service without prejudice after formal hearing under the provisions of this section shall become effective upon final action by the board of trustees.

It is the intent of the legislature by enactment of this section and in accordance with RCW 28B.52.035, to modify any collective bargaining agreements in effect, or any conflicting board policies or rules, so that any reductions in force which take place after December 21, 1981, whether in progress or to be initiated, will comply solely with the provisions of this section: PROVIDED, That any applicable policies, rules, or provisions contained in a collective bargaining agreement related to lay-off units, seniority and re-employment rights shall not be affected by the provisions of this paragraph.

Nothing in this section shall be construed to affect the right of the board of trustees or its designated appointing authority not to renew a probationary faculty appointment pursuant to RCW 28B.50.857.

Sec. 82. Section 9, chapter 136, Laws of 1986 and RCW 28B.85.090 are each amended to read as follows:

(1) A person claiming loss of tuition or fees as a result of an unfair business practice may file a complaint with the board. The complaint shall set forth the alleged violation and shall contain information required by the board. A complaint may also be filed with the board by an authorized staff member of the board or by the attorney general.

(2) The board shall investigate any complaint under this section and may attempt to bring about a settlement. The board may hold a (~~contested case~~) hearing pursuant to the Administrative Procedure Act, chapter (~~34-04~~) 34.05 RCW, in order to determine whether a violation has occurred. If the board prevails, the degree-granting institution shall pay the costs of the administrative hearing.

(3) If, after the hearing, the board finds that the institution or its agent engaged in or is engaging in any unfair business practice, the board shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28B.85.100. If the board finds that the complainant has suffered loss as a result of the act or practice, the board may order full or partial restitution for the loss. The complainant is not bound by the board's determination of restitution and may pursue any other legal remedy.

Sec. 83. Section 12, chapter 299, Laws of 1986 and RCW 28C.10.120 are each amended to read as follows:

(1) A person claiming loss of tuition or fees as a result of an unfair business practice may file a complaint with the agency. The complaint shall set forth the alleged violation and shall contain information required by the agency. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and may attempt to bring about a settlement. The agency may hold a (~~contested case~~) hearing pursuant to the Administrative Procedure Act, chapter (~~34.04~~) 34.05 RCW, in order to determine whether a violation has occurred. If the agency prevails, the private vocational school shall pay the costs of the administrative hearing.

(3) If, after the hearing, the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order full or partial restitution for the loss. The complainant is not bound by the agency's determination of restitution and may pursue any other legal remedy.

Sec. 84. Section 2, chapter 137, Laws of 1977 ex. sess. and RCW 35-.68.076 are each amended to read as follows:

~~((By January 1, 1978;)) The department of general administration shall, pursuant to chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, adopt several suggested model design, construction, or location standards to aid counties, cities, and towns in constructing curb ramps to allow reasonable access to the crosswalk for physically handicapped persons without uniquely endangering blind persons. The department of general administration shall consult with handicapped persons, blind persons, counties, cities, and the state building code ~~((advisory))~~ council in adopting the suggested standards. ~~((In addition, the department of general administration shall, within thirty days of September 21, 1977 and pursuant to RCW 34:04.030, adopt a suggested design or construction standard for curb ramps which may be used by counties, cities, or towns to comply with RCW 35:68.075 in the interval between September 21, 1977 and the adoption of further suggested model standards:))~~~~

Sec. 85. Section 3, chapter 120, Laws of 1983 as amended by section 3, chapter 328, Laws of 1987 and RCW 39.19.030 are each amended to read as follows:

There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled businesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the

definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter ~~((34.04 or 28B.19 RCW, as appropriate;))~~ 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; and (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050;

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state.

Sec. 86. Section 2, chapter 232, Laws of 1977 ex. sess. as amended by section 50, chapter 151, Laws of 1979 and RCW 40.07.020 are each amended to read as follows:

The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Director" means the director of financial management.

(2) "State agency" includes every state office, department, division, bureau, board, commission, committee, higher education institution, community college, and agency of the state and all subordinate subdivisions of such agencies in the executive branch financed in whole or in part from funds held in the state treasury, but does not include the offices of executive officials elected on a state-wide basis, agricultural commodity commissions, the legislature, the judiciary, or agencies of the legislative or judicial branches of state government.

(3) (a) "State publication" means publications of state agencies and shall include any annual and biennial reports, any special report required by

law, state agency newsletters, periodicals and magazines, and other printed informational material intended for general dissemination to the public or to the legislature.

(b) "State publication" may include such other state agency printed informational material as the director may prescribe by rule or regulation, in the interest of economy and efficiency, after consultation with the governor, the state librarian, and any state agencies affected.

(c) "State publication" does not include:

(i) Business forms, preliminary draft reports, working papers, or copies of testimony and related exhibit material prepared solely for purposes of a presentation to a committee of the state legislature;

(ii) Typewritten correspondence and interoffice memoranda, and staff memoranda and similar material prepared exclusively as testimony or exhibits in any proceeding in the courts of this state, the United States, or before any administrative entity;

(iii) Any notices of intention to adopt rules under RCW ~~((34.04.025(1)(a) as now existing or hereafter amended))~~ 34.05.320;

(iv) Publications relating to a multistate program financed by more than one state or by federal funds or private subscriptions; or

(v) News releases sent exclusively to the news media.

(4) "Print" includes all forms of reproducing multiple copies with the exception of typewritten correspondence and interoffice memoranda.

Sec. 87. Section 23, chapter 200, Laws of 1953 as amended by section 15, chapter 128, Laws of 1969 and RCW 41.40.414 are each amended to read as follows:

Following its receipt of a notice for hearing in accordance with RCW 41.40.412, a hearing shall be held by ~~((members of the retirement board, or its))~~ the director or a duly authorized representative(s), in the county of the residence of the claimant at a time and place designated by the ~~((retirement board))~~ director. Such hearing shall be conducted and governed in all respects by the provisions of chapter ~~((34.04))~~ 34.05 RCW ~~((which relates to agency hearings in contested cases))~~.

Sec. 88. Section 14, chapter 50, Laws of 1951 as last amended by section 16, chapter 128, Laws of 1969 and RCW 41.40.420 are each amended to read as follows:

Judicial review of any final decision and order by the ~~((retirement board shall be))~~ director is governed by the provisions of chapter ~~((34.04 RCW as now or hereafter amended))~~ 34.05 RCW.

Sec. 89. Section 2, chapter 1, Laws of 1973 as last amended by section 5, chapter 34, Laws of 1984 and RCW 42.17.020 are each amended to read as follows:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board,

commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(3) "Campaign depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(4) "Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(b) Announces publicly or files for office.

(6) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(7) "Commission" means the agency established under RCW 42.17.350.

(8) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(9) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(10) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services for less than full consideration, but does not include interest on moneys deposited in a political committee's

account, ordinary home hospitality and the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of twenty-five dollars personally paid for by the worker. "Part-time" services, for the purposes of this chapter, means services in addition to regular full-time employment, or, in the case of an un-employed person, services not in excess of twenty hours per week, excluding weekends. For the purposes of this chapter, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this chapter, by the actual cost of consumables furnished in connection with the purchase of the tickets, and only the excess over the actual cost of the consumables shall be deemed a contribution.

(11) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(12) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(13) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(14) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported, or payment of service charges against a political committee's campaign account.

(15) "Final report" means the report described as a final report in RCW 42.17.080(2).

(16) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household.

(17) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(18) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure ((acts, chapter 34.04 RCW and chapter 28B.19)) Act, chapter 34.05 RCW.

(19) "Lobbyist" includes any person who lobbies either in his own or another's behalf.

(20) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist.

(21) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(22) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(23) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(24) "Political committee" means any person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(25) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(26) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(27) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(28) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires.

Sec. 90. Section 17, chapter 1, Laws of 1973 as last amended by section 1, chapter 423, Laws of 1987 and RCW 42.17.170 are each amended to read as follows:

(1) Any lobbyist registered under RCW 42.17.150 and any person who lobbies shall file with the commission periodic reports of his activities signed by the lobbyist. The reports shall be made in the form and manner prescribed by the commission. They shall be due monthly and shall be filed within fifteen days after the last day of the calendar month covered by the report.

(2) Each such monthly periodic report shall contain:

(a) The totals of all expenditures for lobbying activities made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer during the period covered by the report. As used in this section, "lobbying activities" includes, but is not limited to, the development of legislation or rules, the development of support for or opposition to legislation or rules, and attempts to influence the development of legislation or rules. Such totals for lobbying activities shall be segregated according to financial category, including compensation; food and refreshments; living accommodations; advertising; travel; contributions; and other expenses or services. Each individual expenditure of more than twenty-five dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein but without allocating any portion of such expenditure to individual participants.

Notwithstanding the foregoing, lobbyists are not required to report the following:

(i) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(ii) Any expenses incurred for his or her own living accommodations;

(iii) Any expenses incurred for his or her own travel to and from hearings of the legislature;

(iv) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(c) An itemized listing of each such expenditure in the nature of a contribution of money or of tangible or intangible personal property to any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition, or for or on behalf of any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition. All contributions made to, or for the benefit of, any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition shall be identified by date, amount, and the name of the candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or other legislative activity or rule-making under chapter ~~((34.04 RCW and chapter 28B.19))~~ 34.05 RCW, ~~((f))~~the state Administrative Procedure Act, ~~((acts))~~ Act, and the state agency considering the same, which the lobbyist has been engaged in supporting or opposing during the reporting period.

(e) Such other information relevant to lobbying activities as the commission shall by rule prescribe. Information supporting such activities as are required to be reported is subject to audit by the commission.

Sec. 91. Section 12, chapter 112, Laws of 1975-'76 2nd ex. sess. as last amended by section 12, chapter 367, Laws of 1985 and RCW 42.17.395 are each amended to read as follows:

(1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such determination.

(2) The commission, in cases where it chooses to determine whether an actual violation of this chapter has occurred, shall hold a ~~((contested case))~~ hearing pursuant to the Administrative Procedure Act, ~~((f))~~chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~, to make such determination. Any order that the commission issues under this section shall be pursuant to such hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17.360.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17.390(1) (b), (c), (d), or (e): PROVIDED, That no individual penalty assessed by the commission may exceed one thousand dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed two thousand five hundred dollars.

(5) An order issued by the commission under this section shall be subject to judicial review under the Administrative Procedure Act, ~~((f))~~chapter ~~((34.04))~~ 34.05 RCW~~((7))~~. If the commission's order is not satisfied and no petition for review is filed within thirty days as provided in RCW ~~((34.04-130))~~ 34.05.542, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17.397~~((as now or hereafter amended))~~.

Sec. 92. Section 13, chapter 112, Laws of 1975-'76 2nd ex. sess. as amended by section 17, chapter 147, Laws of 1982 and RCW 42.17.397 are each amended to read as follows:

The following procedure shall apply in all cases where the commission has petitioned a court of competent jurisdiction for enforcement of any order it has issued pursuant to this chapter:

(1) A copy of the petition shall be served by certified mail directed to the respondent at his last known address. The court shall issue an order directing the respondent to appear at a time designated in the order, not less than five days from the date thereof, and show cause why the commission's order should not be enforced according to its terms.

(2) The commission's order shall be enforced by the court if the respondent does not appear, or if the respondent appears and the court finds, pursuant to a hearing held for that purpose:

(a) That the commission's order is unsatisfied; and

(b) That the order is regular on its face; and

(c) That the respondent's answer discloses no valid reason why the commission's order should not be enforced or that the respondent had an appropriate remedy by review under RCW ~~((34.04-130))~~ 34.05.570(3) and failed to avail himself of that remedy without valid excuse.

(3) Upon appropriate application by the respondent, the court may, after hearing and for good cause, alter, amend, revise, suspend, or postpone all or part of the commission's order. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) The court's order of enforcement, when entered, shall have the same force and effect as a civil judgment.

(5) Notwithstanding RCW 34.05.578 through 34.05.590, this section is the exclusive method for enforcing an order of the commission.

Sec. 93. Section 2, chapter 150, Laws of 1965 ex. sess. as amended by section 106, chapter 81, Laws of 1971 and RCW 42.21.020 are each amended to read as follows:

"Public official" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state and includes judges of the superior court, the court of appeals, and justices of the supreme court, members of the legislature together with the secretary and sergeant at arms of the senate and the clerk and sergeant at arms of the house of representatives, elective and appointive state officials, and such employees of the supreme court, of the legislature, and of the state offices as are engaged in supervisory, policy making, or policy enforcing work.

"Candidate" means any individual who declares himself to be a candidate for an elective office and who if elected thereto would meet the definition of public official herein set forth.

"Regulatory agency" means any state board, commission, department, or officer authorized by law to make rules or to ~~((adjudicate contested cases))~~ conduct adjudicative proceedings except those in the legislative or judicial branches.

Sec. 94. Section 14, chapter 250, Laws of 1971 ex. sess. as amended by section 4, chapter 66, Laws of 1973 and RCW 42.30.140 are each amended to read as follows:

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by ~~((Title 34))~~ chapter 34.05 RCW, the Administrative Procedure Act ~~((, except as expressly provided in RCW 34.04-025))~~; or

(4) That portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by such governing

body during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in such negotiations or proceedings while in progress.

NEW SECTION. Sec. 95. A new section is added to chapter 43.20A RCW to read as follows:

This section governs the denial of an application for a license or the suspension, revocation, or modification of a license by the department.

(1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(3) A license applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days notice of revocation, suspension, or modification and the licensee files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the

effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause.

NEW SECTION. Sec. 96. A new section is added to chapter 43.20A RCW to read as follows:

This section governs the assessment of a civil fine against a person by the department.

(1) The department shall written give notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner which shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause.

Sec. 97. Section 2, chapter 102, Laws of 1967 ex. sess. as last amended by section 21, chapter 41, Laws of 1983 1st ex. sess. and RCW 43.20A.605 are each amended to read as follows:

(1) The secretary shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in ~~((agency hearings and contested cases shall be))~~ adjudicative proceedings are governed by ~~((the provisions of RCW 34-04-105))~~ section 30(1) of this act.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by ~~((the following:~~

~~(a) The secretary shall not compel the production of any papers, books, records, or documents which are in the custody of another public official or agency and within the public official's or agency's power to provide voluntarily on request.~~

~~(b) If an individual fails to obey the subpoena or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation, the secretary may petition the superior court of the county where the examination or investigation is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and at that time and place show cause why the witness has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers. On failing to obey the order, the witness shall be dealt with as for contempt of court.~~

~~(c) Subpoenas issued under this subsection shall be served in the manner prescribed for service of a summons in a civil action or by certified mail; return receipt requested. The return receipt is prima facie evidence of service)) section 30(2) of this act.~~

Sec. 98. Section 6, chapter 127, Laws of 1967 ex. sess. as last amended by section 15, chapter 75, Laws of 1987 and RCW 43.20B.340 are each amended to read as follows:

In any case where determination is made that a person, or the estate of such person, is able to pay all, or any portion of the charges for hospitalization, and/or charges for outpatient services, a notice and finding of responsibility shall be served on such person or the court-appointed personal representative of such person. The notice shall set forth the amount the department has determined that such person, or his or her estate, is able to pay not to exceed the costs of hospitalization, and/or costs of outpatient services, as fixed in accordance with the provisions of RCW 43.20B.325, or as otherwise limited by the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350. The responsibility for the payment to the department shall commence ~~((thirty))~~ twenty-eight days after service of such notice and finding of responsibility which finding of responsibility shall cover the period

from the date of admission of such mentally ill person to a state hospital, and for the costs of hospitalization, and/or the costs of outpatient services, accruing thereafter. The notice and finding of responsibility shall be served upon all persons found financially responsible in the manner prescribed for the service of summons in a civil action or may be served by certified mail, return receipt requested. The return receipt signed by addressee only is prima facie evidence of service. An ~~((appeal may be made to))~~ application for an adjudicative proceeding may be filed with the secretary, or the secretary's designee within ~~((thirty))~~ twenty-eight days from the date of service of such notice and finding of responsibility ~~((, upon the giving of))~~. The application must be written ((notice of appeal to)) and served on the secretary by registered or certified mail, or by personal service. If no ~~((appeal))~~ application is ((taken)) filed, the notice and finding of responsibility shall become final. If an ~~((appeal))~~ application is ((taken)) filed, the execution of notice and finding of responsibility shall be stayed pending the ~~((decision of such appeal. Appeals may be heard in any county seat most))~~ final adjudicative order. The hearing shall be conducted in a local department office or other location in Washington convenient to the appellant. ((The hearing of appeal may be presided over by an administrative law judge appointed under chapter 34.12 RCW, and the proceedings shall be recorded either manually or by a mechanical device. At the conclusion of such hearing, the administrative law judge shall make findings of fact and conclusions and recommended determination of responsibility. Thereafter, the secretary, or the secretary's designee, may either affirm, reject, or modify the findings, conclusions, and determination of responsibility made by the administrative law judge. Judicial review of the secretary's determination of responsibility in the superior court, the court of appeals, and the supreme court may be taken in accordance with the provisions of)) The proceeding is governed by the Administrative Procedure Act, chapter ((34.04)) 34.05 RCW.

Sec. 99. Section 5, chapter 141, Laws of 1967 as last amended by section 905, chapter 176, Laws of 1988 and RCW 43.20B.430 are each amended to read as follows:

In all cases where a determination is made that the estate of a resident of a residential habilitation center is able to pay all or any portion of the charges, a notice and finding of responsibility shall be served on the guardian of the resident's estate, or if no guardian has been appointed then to the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident. The notice shall set forth the amount the department has determined that such estate is able to pay, not to exceed the charge as fixed in accordance with RCW 43.20B.420, and the responsibility for payment to the department shall commence ~~((thirty))~~ twenty-eight days after personal service of such notice and finding of responsibility. Service shall be in the manner prescribed for the service of a summons in a civil action or may be served

by certified mail, return receipt requested. The return receipt signed by addressee only is prima facie evidence of service. An ~~((appeal))~~ application for an adjudicative proceeding from the determination of responsibility may be made to the secretary by the guardian of the resident's estate, or if no guardian has been appointed then by the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident of a state school, within such ~~((thirty))~~ twenty-eight day period ~~((upon))~~. The application must be written ~~((notice of appeal being))~~ and served ~~((upon))~~ on the secretary by registered or certified mail, or by personal service. If no ~~((appeal))~~ application is ~~((taken))~~ filed, the notice and finding of responsibility shall become final. If an ~~((appeal))~~ application is ~~((taken))~~ filed, the execution of notice and finding of responsibility shall be stayed pending the ~~((decision of such appeal. Appeals may be heard in any county seat most))~~ final adjudicative order. The hearing shall be conducted in a local department office or other location in Washington convenient to the appellant. ~~((The hearing of appeals may be presided over by an administrative law judge appointed under chapter 34.12 RCW and the proceedings shall be recorded either manually or by a mechanical device. Any such appeal shall be a "contested case" as defined in RCW 34.04.010, and practice and procedure shall be governed by the provisions of RCW 43.20B.410 through 43.20B.455, the rules and regulations of the department, and))~~ The proceeding is governed by the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

Sec. 100. Section 1, chapter 163, Laws of 1981 as amended by section 18, chapter 201, Laws of 1982 and RCW 43.20B.630 are each amended to read as follows:

(1) Any person who owes a debt to the state for an overpayment of public assistance and/or food stamps shall be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice shall be in the manner prescribed for the service of a summons in a civil action. The notice shall include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from public assistance and/or food stamps; a statement that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from public assistance and/or food stamps or the receipt of the notice of debt, whichever is later. This does not preclude the department from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial

assistance programs: PROVIDED, That subject to federal legal requirement, deductions shall not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the department or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) ~~((Any debtor who alleges defenses to the debt or disputes the stated amount of the))~~ A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of public assistance or food stamps has the right to ~~((request in writing a hearing))~~ an adjudicative proceeding pursuant to RCW ((74.08.070)) 74.08.080. If no ~~((such request))~~ application is ((made)) filed, the debt will be subject to collection action as authorized under this chapter. If a timely ~~((request))~~ application is ((made)) filed, the execution of collection action on the debt shall be stayed pending the ~~((decision of the hearing))~~ final adjudicative order or termination of the debtor from public assistance and/or food stamps, whichever occurs later. ~~((The right to an appeal shall be governed by RCW 74.08.070, 74.08.080, and the Administrative Procedure Act, chapter 34.04 RCW:))~~

Sec. 101. Section 5, chapter 102, Laws of 1973 1st ex. sess. as amended by section 35, chapter 75, Laws of 1987 and RCW 43.20B.740 are each amended to read as follows:

Any person feeling ~~((himself))~~ aggrieved by the action of the department of social and health services in impounding his or her time loss compensation as provided in RCW 43.20B.720 through 43.20B.745 shall have the right to an ~~((administrative hearing, which hearing may be conducted by an examiner designated by the secretary for such purpose))~~ adjudicative proceeding.

Any such person who desires a hearing shall, within ~~((thirty))~~ twenty-eight days after the notice to withhold and deliver has been mailed to or served upon the director of the department of labor and industries and said appellant, file with the secretary ~~((a notice of appeal from said action))~~ an application for an adjudicative proceeding.

The ~~((hearings conducted))~~ proceeding shall be ~~((in accordance with))~~ governed by chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~ the Administrative Procedure Act ~~((3)).~~

Sec. 102. Section 41, chapter 62, Laws of 1970 ex. sess. as amended by section 10, chapter 109, Laws of 1987 and RCW 43.21B.110 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, 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 70.94.431, 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350.

(b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 90.14.130, and 90.48.120.

(c) 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, or the modification of the conditions or the terms of a waste disposal permit.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Any other decision by the department or an air authority which pursuant to law must be decided as ~~((a contested case under chapter 34-04))~~ 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 by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(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 ~~((34-04))~~ 34.05 RCW.

Sec. 103. Section 46, chapter 62, Laws of 1970 ex. sess. as amended by section 3, chapter 69, Laws of 1974 ex. sess. and RCW 43.21B.160 are each amended to read as follows:

In all appeals involving a formal hearing, the hearings board or its hearing examiners shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter ~~((34-04))~~ 34.05 RCW, the Administrative Procedure Act; and the hearings board, and each member thereof, or its hearing examiners, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter ~~((34-04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings. In the case of appeals within the scope of this ~~((1970 act))~~ chapter, the hearings board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board, or any member thereof, may deem necessary or appropriate: PROVIDED, That any communication, oral or written, from the staff of the director to the hearings board or its hearing examiners, shall be presented only in an open hearing.

Sec. 104. Section 48, chapter 62, Laws of 1970 ex. sess. and RCW 43-21B.180 are each amended to read as follows:

Judicial review of a decision of the hearings board shall be de novo except when the decision has been rendered pursuant to a formal hearing elected under the provisions of this ~~((1970 act))~~ chapter, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598. The director shall have the same right of review from a decision made pursuant to RCW 43.21B.110 as does any person.

Sec. 105. Section 54, chapter 62, Laws of 1970 ex. sess. as amended by section 9, chapter 109, Laws of 1987 and RCW 43.21B.240 are each amended to read as follows:

The department and air authorities shall not have authority to hold ~~((public hearings on contested cases))~~ adjudicative proceedings pursuant to the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. Such hearings shall be held by the pollution control hearings board.

Sec. 106. Section 4, chapter 10, Laws of 1979 as amended by section 1, chapter 89, Laws of 1980 and RCW 43.51.040 are each amended to read as follows:

The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt, promulgate, issue, and enforce rules ~~((and regulations))~~ pertaining to the use, care, and administration of state parks and parkways ~~((, which shall become effective ten days after adoption))~~. The commission shall cause a copy of the rules ~~((and regulations))~~ to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule ~~((or regulation))~~ posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules ~~((and regulations))~~ as shall be ~~((prescribed))~~ adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than forty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED

FURTHER, That television station leases shall be subject to the provisions of RCW 43.51.063, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this subdivision shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

Sec. 107. Section 8, chapter 209, Laws of 1975 1st ex. sess. as last amended by section 16, chapter 36, Laws of 1988 and RCW 43.51.340 are each amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2) (a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 43.51.310 for travel expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now or hereafter amended~~)).

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. The chairman of the committee shall be chosen under (~~rules~~) procedures adopted by the committee. The committee shall adopt any other (~~rules~~) procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(7) The winter recreation advisory committee and its powers and duties shall terminate on June 30, 1991.

Sec. 108. Section 8, chapter 115, Laws of 1975-'76 2nd ex. sess. and RCW 43.60A.070 are each amended to read as follows:

In addition to other powers and duties, the director is authorized:

(1) To cooperate with officers and agencies of the United States in all matters affecting veterans affairs;

(2) To accept grants, donations, and gifts on behalf of this state for veterans affairs from any person, corporation, government, or governmental agency, made for the benefit of a former member of the armed forces of this or any other country;

(3) To be custodian of all the records and files of the selective service system in Washington that may be turned over to this state by the United States or any department, bureau, or agency thereof; and to adopt and promulgate such rules and regulations as may be necessary for the preservation of such records and the proper use thereof in keeping with their confidential nature;

(4) To act without bond as conservator of the estate of a beneficiary of the veterans administration when the director determines no other suitable person will so act;

(5) To extend on behalf of the state of Washington such assistance as the director shall determine to be reasonably required to any veteran and to the dependents of any such veteran;

(6) To adopt rules (~~and regulations~~) pursuant to chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act, with respect to all matters of administration to carry into effect the purposes of this section. Such proposed rules (~~and regulations~~) shall be submitted by the department at the time of filing notice with the code reviser as required by RCW (~~34.04-025~~) 34.05.320 to the respective legislative committees of the senate and of the house of representatives dealing with the subject of veteran affairs legislation through the offices of the secretary of the senate and chief clerk of the house of representatives.

Sec. 109. Section 8, chapter 289, Laws of 1977 ex. sess. as amended by section 3, chapter 27, Laws of 1983 1st ex. sess. and RCW 43.131.080 are each amended to read as follows:

(1) Following receipt of the final report from the legislative budget committee, the appropriate committees of reference in the senate and the house of representatives shall each hold a public hearing, unless a joint hearing is held, to consider the final report and any related data. The committees shall also receive testimony from representatives of the state agency or agencies involved, which shall have the burden of demonstrating a public need for its continued existence; and from the governor or the governor's designee, and other interested parties, including the general public.

(2) When requested by either of the presiding members of the appropriate senate and house committees of reference, a regulatory entity under review shall mail an announcement of any hearing to the persons it regulates who have requested notice of agency rule-making proceedings as provided in RCW (~~34.04.025(1)(a), as now existing or hereafter amended~~) 34.05.320, or who have requested notice of hearings held pursuant to the provisions of this section. On request of either presiding member, such mailing shall include an explanatory statement not exceeding one page in length prepared and supplied by the member's committee.

(3) The presiding members of the senate committee on ways and means and the house committee on appropriations may designate one or more liaison members to each committee of reference in their respective chambers for purposes of participating in any hearing and in subsequent committee of reference discussions and to seek a coordinated approach between the committee of reference and the committee they represent in a liaison capacity.

(4) Following any hearing under subsection (1) of this section by the committees of reference, such committees may hold additional meetings or hearings to come to a final determination as to whether a state agency has demonstrated a public need for its continued existence or whether modifications in existing procedures are needed. In the event that a committee of

reference concludes that a state agency shall be reestablished or modified or its functions transferred elsewhere, it shall make such determination as a bill. No more than one state agency shall be reestablished or modified in any one bill.

Sec. 110. Section 1201, chapter 330, Laws of 1987 as amended by section 26, chapter 36, Laws of 1988 and RCW 46.10.220 are each amended to read as follows:

(1) There is created in the Washington state parks and recreation commission a snowmobile advisory committee to advise the commission regarding the administration of this chapter.

(2) The purpose of the committee is to assist and advise the commission in the planned development of snowmobile facilities and programs.

(3) The committee shall consist of:

(a) Six interested snowmobilers, appointed by the commission; each such member shall be a resident of one of the six geographical areas throughout this state where snowmobile activity occurs, as defined by the commission;

(b) Three representatives of the nonsnowmobiling public, appointed by the commission; and

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties; each of whom shall be appointed by the director of such department or association.

(4) Terms of the members appointed under (3)(a) and (b) of this section shall commence on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term: PROVIDED, That the first such members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(5) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now or hereafter amended~~). Expenditures under this subsection shall be from the snowmobile account created by RCW 46.10.075.

(6) The committee may meet at times and places fixed by the committee. The committee shall meet not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. One of the meetings shall be coincident with a meeting of the commission at which the committee shall provide a report to the commission. The chairman of the committee shall be chosen under (~~rules~~) procedures adopted by the committee from those members appointed under (3)(a) and (b) of this section.

(7) The Washington state parks and recreation commission shall serve as recording secretary to the committee. A representative of the department of licensing shall serve as an ex officio member of the committee and shall be notified of all meetings of the committee. The recording secretary and the ex officio member shall be nonvoting members.

(8) The committee shall adopt ~~((rules))~~ procedures to govern its proceedings.

Sec. 111. Section 3, chapter 189, Laws of 1982 and RCW 46.20.331 are each amended to read as follows:

The director may appoint a designee, or designees, to preside over hearings in ~~((contested cases which))~~ adjudicative proceedings that may result in the denial, restriction, suspension, or revocation of a driver's license or driving privilege, or in the imposition of requirements to be met prior to issuance or reissuance of a driver's license, under Title 46 RCW. The director may delegate to any such designees the authority to render the final decision of the department in such ~~((cases))~~ proceedings. Chapter 34.12 RCW shall not apply to such ~~((cases))~~ proceedings.

Sec. 112. Section .03.07, chapter 79, Laws of 1947 as last amended by section 15, chapter 237, Laws of 1967 and RCW 48.03.070 are each amended to read as follows:

(1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW ~~((34.04.105))~~ 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and ~~((contested case))~~ adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with ~~((subsection (5) of RCW 34.04.105))~~ section 30 of this act.

Sec. 113. Section .17.54, chapter 79, Laws of 1947 as last amended by section 14, chapter 248, Laws of 1988 and RCW 48.17.540 are each amended to read as follows:

(1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and

without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By order given to the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, ((34.04.120)) the Administrative Procedure Act, effective not less than ten days after the date of the ((giving)) service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order ((given to)) served upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action.

Sec. 114. Section 5, chapter 256, Laws of 1979 ex. sess. and RCW 48-.62.050 are each amended to read as follows:

Prior to the establishment of a joint self-insurance pool by any organization of local governmental entities that is organized under RCW 48.62-.040 for the purpose of self-insuring through a contributing trust, approval of the establishment of such self-insurance pool shall be obtained from the state risk manager pursuant to RCW 43.19.19362 in accordance with the following procedure:

(1) A proposed plan of organization and operation, including the following elements shall be submitted;

(a) A financial plan specifying:

(i) The coverage to be offered by the self-insurance pool, setting forth the deductible level and the maximum level of claims which the pool will self-insure;

(ii) The amount of cash reserves to be set aside for the payment of claims;

(iii) The amount of insurance to be purchased over and above the amount of claims to be satisfied directly from the organization's resources;

(iv) The amount of stop-loss coverage to be purchased in the event that the joint self-insurance pool's resources are exhausted in a given fiscal period; and

(v) Certification that the participating local governmental entities in the self-insurance pool are apprised of the limitations of coverage provided and the availability of additional coverage which may be purchased individually by the participants in the pool;

(b) A plan of management setting forth the means of fulfilling the requirements of RCW 48.62.090(1), the means of establishing the governing authority of the organization, and the frequency of actuarial studies to establish the periodic contribution rates for each of the participants; and

(c) A plan specifying the conditions and responsibilities of the participants, including procedures for entry into and withdrawal from the pool and the allocation of contingent liabilities pursuant to RCW 48.62.060.

(2) Within sixty days after receipt of the aforementioned plan, the state risk manager shall determine whether the organization proposing to create a joint self-insurance pool has complied with the procedures and provisions contained in RCW 48.62.050(1), and has made provision for professional management of the joint self-insurance pool pursuant to RCW 48.62.090(1), and has provided for the insurance coverages required in RCW 48.62.090 (2) and (3), and that participants in the proposed joint self-insurance pool have been informed of the deductibles and limitations established pursuant to RCW 48.62.090(4). If the state risk manager determines that these criteria have been met, he shall approve the plan of operation of the proposed joint self-insurance pool, and such organization shall be authorized to commence operation.

(3) If approval is denied, the state risk manager shall specify in detail the reasons for denial and the manner in which the proposed joint self-insurance pool fails to meet the requirements of this section and RCW 48.62.090(1) through (4) and make comments and suggestions as to means by which such deficiencies could be corrected. The provisions of RCW ((34.04.090)) 34.05.410 through 34.05.494 shall apply with regard to such basis for denial and a review thereof. If the risk manager fails to act within the time limit established in subsection (2) of this section the plan of operation of the proposed joint self-insurance pool shall be deemed approved.

Sec. 115. Section 17, chapter 270, Laws of 1955 as last amended by section 23, chapter 185, Laws of 1985 and RCW 49.60.250 are each amended to read as follows:

(1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to

answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars, and including a requirement for report of the matter on compliance.

(6) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW (~~34.04.130 or 34.04.133~~) 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(7) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(8) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law

judge concludes that the complaint was frivolous, unreasonable, or groundless.

(9) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

Sec. 116. Section 21, chapter 37, Laws of 1957 as last amended by section 47, chapter 202, Laws of 1988 and RCW 49.60.260 are each amended to read as follows:

(1) The commission shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission shall cause a notice of the petition to be sent by ~~((registered))~~ certified mail to all parties or their representatives.

(2) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(3) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission shall immediately serve the person with a copy of the court order and the petition.

(4) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW ~~((34.04.130))~~ 34.05.510 through 34.05-.598, and the person has given no valid excuse for failing to use that remedy.

(5) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases.

Sec. 117. Section 120, chapter 35, Laws of 1945 as last amended by section 3, chapter 61, Laws of 1987 and RCW 50.32.040 are each amended to read as follows:

In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(3) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice (~~(- This provision supersedes the twenty-day notice provision of RCW 34.04.090 as to such cases)~~) in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner.

Sec. 118. Section 125, chapter 35, Laws of 1945 as amended by section 15, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.32.090 are each amended to read as follows:

Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW (~~(34.04.110, shall)~~), becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general.

Sec. 119. Section 130, chapter 35, Laws of 1945 as amended by section 18, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.32.140 are each amended to read as follows:

RCW (~~(34.04.130)~~) 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals.

Sec. 120. Section 7, chapter 315, Laws of 1985 as amended by section 3, chapter 316, Laws of 1987 and RCW 51.48.131 are each amended to read as follows:

A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW (~~(34.04.130 and 34.04.140)~~) 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers.

Sec. 121. Section 34, chapter 43, Laws of 1972 ex. sess. as amended by section 8, chapter 315, Laws of 1985 and RCW 51.48.140 are each amended to read as follows:

If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW (~~(51.48.030)~~) 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in

RCW (~~(34.04.130)~~) 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk.

Sec. 122. Section 62, chapter 62, Laws of 1933 ex. sess. as amended by section 23, chapter 237, Laws of 1967 and RCW 66.08.150 are each amended to read as follows:

The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be (~~(a contested case)~~) an adjudicative proceeding and subject to the applicable provisions of chapter (~~(34.04 RCW as amended by this 1967 amendatory act)~~) 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined.

Sec. 123. Section 6, chapter 7, Laws of 1982 2nd ex. sess. and RCW 67.70.060 are each amended to read as follows:

(1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW ((34.04.090 (6) and (8), 34.04.100, and 34.04.105)).

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter ((34.04)) 34.05 RCW.

Sec. 124. Section 31, chapter 21, Laws of 1979 as amended by section 26, chapter 331, Laws of 1987 and RCW 68.05.310 are each amended to read as follows:

The board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a certificate of authority or a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for ~~((contested cases))~~ adjudicative proceedings under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, before the order of suspension, revocation, or refusal may become effective.

No cemetery authority whose prearrangement sales license has been suspended, revoked, or refused shall be authorized to enter into prearrangement contracts. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund.

Sec. 125. Section 8, chapter 144, Laws of 1955 as amended by section 71, chapter 141, Laws of 1979 and RCW 69.30.080 are each amended to read as follows:

~~((Any order issued by))~~ The department ((which denies or revokes)) may deny, revoke, suspend, or modify a certificate of approval ((for a shellfish growing area or establishment shall be in writing and shall contain a statement of the grounds upon which said denial or revocation is based. A copy of the department's order shall be sent by registered mail to the person whose name appears on the certificate of approval or application therefor. Said order shall become final fifteen days after the date of mailing, provided the person aggrieved by such order does not, within ten days of the date of mailing of such order, apply in writing to the secretary for a fair hearing. Upon such application, the department shall fix a time for such hearing and shall give the person aggrieved a notice of the time fixed for such a hearing. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the state board of health. The secretary shall render his decision affirming, modifying or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final fifteen days after the date of mailing)), license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 126. Section 11, chapter 161, Laws of 1979 ex. sess. as last amended by section 22, chapter 288, Laws of 1984 and RCW 70.38.115 are each amended to read as follows:

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary of the department in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The relationship of the health services being reviewed to the applicable health plans;

(b) The need that the population served or to be served by such services has for such services;

(c) The availability of less costly or more effective alternative methods of providing such services;

(d) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served, including findings and recommendations of the Washington state hospital commission in the case of applications submitted by hospitals. An application by a hospital shall be denied if the state hospital commission does not recommend approval, unless the secretary provides the commission with a written statement setting forth the reason or reasons, and citing the applicable subsection or subsections of this section, for approving an application that the commission has determined to be not feasible;

(e) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(f) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(g) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(h) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(i) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(j) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past; and

(k) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the hospital commission.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) The decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in

which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or a designated regional health council shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked ~~((shall be afforded an opportunity for administrative review in accordance with chapter 34.04 RCW and a hearing shall be held within one hundred twenty days of a request therefor. An administrative law judge shall review the decision of the secretary's designee and render a proposed decision for consideration by the secretary in accordance with chapter 34.12 RCW or remand the matter to the secretary's designee for further consideration. The secretary's final decision is subject to review by the superior court as provided in chapter 34.04 RCW:~~

~~(11) The department may establish procedures and criteria for reconsideration of decisions:~~

~~(12)) has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.~~

(11) An amended certificate of need shall be required for the following modifications of an approved project:

(a) A new service;

- (b) An expansion of a service beyond that originally approved;
- (c) An increase in bed capacity;

(d) A significant reduction in the scope of a project without a commensurate reduction in the cost of the project, or a cost increase (as represented in bids on a construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the project with the review criteria pertaining to financial feasibility and cost containment.

~~((13))~~ (12) An application for a certificate of need for a capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

Sec. 127. Section 3, chapter 267, Laws of 1955 as last amended by section 17, chapter 213, Laws of 1985 and RCW 70.41.030 are each amended to read as follows:

The department~~((:))~~ shall establish and adopt such minimum standards~~((:))~~ and rules ~~((and regulations))~~ pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules ~~((and regulations))~~ from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. ~~((All rules and regulations to become effective shall be filed with the office of the code reviser.~~

~~The department shall conduct fair hearing procedures as provided in RCW 70.41.130.))~~

Sec. 128. Section 13, chapter 267, Laws of 1955 as amended by section 22, chapter 213, Laws of 1985 and RCW 70.41.130 are each amended to read as follows:

The department is authorized to deny, suspend, ~~((or))~~ revoke, or modify a license or provisional license ~~((in the manner prescribed herein))~~ in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards~~((:))~~ or rules ~~((and regulations established hereunder. The department shall issue an order to the applicant or licensee giving notice of any rejection, revocation, or suspension, which order shall become final thirty days after the date of mailing. PROVIDED, That the applicant or licensee does not within thirty days from the date of mailing of the department's order or rejection, revocation, or suspension of license, make written application to the department for a hearing upon receipt of which the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed therefor. The procedure governing hearings authorized by this section shall~~

~~be in accordance with rules promulgated by the department. The department shall render its decision affirming, modifying, or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final thirty days after the date of mailing)) adopted under this chapter. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

Sec. 129. Section 51, chapter 228, Laws of 1961 as amended by section 29, chapter 230, Laws of 1982 and RCW 70.77.370 are each amended to read as follows:

Any applicant who has been denied a license is entitled to a hearing in accordance with the provisions of chapter ~~((48.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 130. Section 12, chapter 236, Laws of 1986 and RCW 70.90.210 are each amended to read as follows:

(1) Any person aggrieved by an order ~~((or action))~~ of the department ~~((may request a hearing under the administrative procedure act, chapter 34.04 RCW. Notice shall be provided by the department as required under chapter 34.04 RCW for contested cases))~~ or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. Section 96 of this act governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order ~~((or action))~~ of a local health officer ~~((may request a hearing which shall be held consistent with))~~ or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements.

Sec. 131. Section 9, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.090 are each amended to read as follows:

(1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment

facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment facilities, and its approval revoked or suspended.

(5) The ~~((division, after holding a hearing,))~~ department may suspend, revoke, limit, ~~((or))~~ restrict, or modify an approval, or ~~((without hearing,))~~ refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(6) ~~((The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.~~

(7)) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

Sec. 132. Section 5, chapter 207, Laws of 1961 as last amended by section 1, chapter 383, Laws of 1985 and RCW 70.98.050 are each amended to read as follows:

(1) The department of social and health services is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of social and health services shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a state-wide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent state-wide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

~~((c)-(e))~~ (e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) In connection with any ~~((contested case))~~ adjudicative proceeding as defined by RCW ~~((34.04.010))~~ 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information.

Sec. 133. Section 13, chapter 207, Laws of 1961 and RCW 70.98.130 are each amended to read as follows:

In any proceeding under this chapter for the issuance or modification or repeal of rules (~~and regulations~~) relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, ((34.04.020)) the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW ((34.04.030)) 34.05.350 without notice or hearing, (~~issue a regulation or order~~) adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW ((34.04.030)) 34.05.350, such (~~regulations or orders shall be~~) rules are effective immediately.

Sec. 134. Section 7, chapter 2, Laws of 1987 3rd ex. sess. and RCW 70.105B.070 are each amended to read as follows:

(1) Whenever the department has reason to believe that a release or threatened release of a hazardous substance will require remedial action, it shall notify potentially liable persons with respect to the release or threatened release, and provide them with a reasonable opportunity to propose a settlement agreement providing for remedial action. Whenever the department considers it to be in the public interest, the department shall expedite such an agreement with parties whose contribution of hazardous substances is insignificant in amount and toxicity.

(2) (~~Within nine months after October 16, 1987,)~~ The department shall adopt rules under chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act, to implement this section. At a minimum the rules shall:

(a) Provide procedures by which potentially liable persons may propose one or more remedial actions;

(b) Provide procedures for public notice and an opportunity to comment on proposed settlements;

(c) Establish reasonable deadlines and time periods for activities under this subsection; and

(d) Ensure that agreements providing for voluntary cleanups attain the cleanup levels required under RCW 70.105B.060.

(3) Where the department and one or more potentially liable persons are unable to reach agreement for remedial action that will provide a final cleanup remedy, the persons may submit a final offer of a proposed settlement agreement, together with any material supporting the proposal. The department shall consider the offer and material submitted, as well as public comments provided on the offer, and shall issue a decision accepting or rejecting the offer. Where the department accepts the offer, it shall be entered as a consent decree pursuant to the procedures of subsection (5) of this section. Where the department rejects the offer, it shall state in writing its reasons for rejection. This review process shall not be considered ((a

~~contested case~~) an adjudicative proceeding for the purpose of the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

(4) The person or persons proposing an agreement rejected by the department under subsection (3) of this section have a right to review only as provided in RCW 70.105B.130.

(5) Where the department and potentially liable persons reach an agreement providing for voluntary remedial action, it shall be filed with the appropriate superior court as a proposed consent decree. The court shall allow at least thirty days for public comments before the proposed decree is entered, and the department shall file with the court any written comments received on the proposed decree.

(6) A person who has resolved its liability to the state under this section is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons, but it reduces the total potential liability of the others to the state by the amount of the settlement.

(7) The director may enter into a settlement agreement that requires the department to provide a specified amount of money from the state toxics control account to help defray the costs of implementing the plan. These funds may be provided only in circumstances where the director finds it would expedite or enhance cleanup operations or achieve greater fairness with respect to the payment of remedial action costs. In determining whether public funding will achieve greater fairness, the director shall consider the extent to which public funding will prevent or mitigate economic hardship. The director shall adopt rules providing criteria and priorities governing public funding of remedial action costs under this subsection. The amount of public funding in an agreement under this section shall be determined solely in the discretion of the director and is not subject to review. The department may recover the amount of public funding provided under this subsection from a potentially liable person who has not entered into a settlement agreement under this section or fulfilled all obligations under the agreement. For purposes of such a recovery action, the amount shall be considered as remedial action costs paid by the department.

Sec. 135. Section 4, chapter 271, Laws of 1986 and RCW 70.119A.040 are each amended to read as follows:

(1) In addition to or as an alternative to any other penalty provided by law, every person who commits any of the acts or omissions in RCW 70.119A.030 shall be subjected to a penalty in an amount of not more than five thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in

the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided in this section.

(2) The penalty provided for in this section 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 same from the department, describing))~~ against whom the civil fine is assessed and shall describe the violation ~~((with reasonable particularity))~~. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within ~~((fifteen))~~ fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner ~~((and under such rules))~~ as it may deem proper. ~~((Any penalty imposed by this section shall be subject to review by the office of administrative hearings in accordance with chapter 34.12 RCW;))~~ When an application for remission on mitigation is made, a penalty incurred under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

~~((3) Any))~~ (5) A penalty imposed by ~~((this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review is filed directly to the office of administrative hearings within thirty days of the imposition of the penalty. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the office of administrative hearings shall become due and payable thirty days after receipt of the notice setting forth the decision.~~

~~(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable,)) a final order after an adjudicative proceeding is due upon service of the final order.~~

~~(6) The attorney general((, upon the request of the secretary of the department, shall)) may bring an action in the name of the ((state of Washington)) department in the superior court of Thurston county, or of any county in which such violator may do business, to ((recover such)) collect a penalty. ((In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided:~~

~~(5)) (7) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund.~~

Sec. 136. Section 4, chapter 244, Laws of 1986 and RCW 70.150.040 are each amended to read as follows:

The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than sixty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal that a public body's annual costs will be lower under its proposal than they would be if the public body financed, constructed, owned, operated, and maintained facilities required for service.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body,

which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority shall designate persons or entities (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received. The designee shall not be a member of the legislative authority.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority's designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents shall be referred to as the selected respondents in this section. The designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall also allow the designee to make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If the negotiation is unsuccessful, the legislative authority may authorize the designee to commence negotiations with any other selected respondent. On completion of this process, the designee shall report to the legislative authority on his or her recommendations and the reasons for them.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The hearing shall be conducted in the same manner as ~~((a) a contested case under~~

~~chapter 34.04~~) an adjudicative proceeding under chapter 34.05 RCW. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design of water pollution control facilities shall be done in accordance with chapter 39.80 RCW.

(8) A service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed and approved by the department of ecology to ensure that the purposes of chapter 90.48 RCW are implemented.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider.

Sec. 137. Section 71.12.500, chapter 25, Laws of 1959 as amended by section 136, chapter 141, Laws of 1979 and RCW 71.12.500 are each amended to read as follows:

The department of social and health services may at any time examine and ascertain how far a licensed establishment is conducted in compliance with the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license ((after notice and hearing)). Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 138. Section 105, chapter 176, Laws of 1988 and RCW 71A.10.050 are each amended to read as follows:

(1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following ((adverse decisions)) department actions:

((1)) (a) A denial of an application for eligibility under RCW 71A.16.040;

((2)) (b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

((3)) (c) A denial, reduction, or termination of a service; ((and

((4)) (d) A claim that the person owes a debt to the state for an overpayment((:));

~~((5))~~ (e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The ~~((hearing))~~ adjudicative proceeding is governed by the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

Sec. 139. Section 106, chapter 176, Laws of 1988 and RCW 71A.10.060 are each amended to read as follows:

(1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing (~~a request~~) an application with the secretary within thirty days of receipt of the notice, the person who made the request (~~may have a hearing~~) has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent.

Sec. 140. Section 107, chapter 176, Laws of 1988 and RCW 71A.10.070 are each amended to read as follows:

(1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing (~~a request~~) an application with the secretary within thirty days of receipt of the notice, the person who made the request (~~shall have~~) has the right to (~~a hearing~~) an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent.

Sec. 141. Section 404, chapter 176, Laws of 1988 and RCW 71A.16-.040 are each amended to read as follows:

(1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application~~((;))~~ and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include ~~((notice of))~~ a statement advising the recipient of the right to ((hearing provided by)) an adjudicative proceeding under RCW 71A.10.050 and ((notice of)) the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title.

Sec. 142. Section 603, chapter 176, Laws of 1988 and RCW 71A.18-.040 are each amended to read as follows:

(1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to ~~((a hearing))~~ an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section.

Sec. 143. Section 708, chapter 176, Laws of 1988 and RCW 71A.20.080 are each amended to read as follows:

Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after ~~((notice to and consultation with the resident, and with any available parent, guardian, or other court-appointed personal representative of such person.~~

~~If the resident, parent of a resident who is a minor, or guardian or other court-appointed personal representative of the resident believes that the specific placement decision is not in the best interests of the resident, he or she may request a hearing before an administrative law judge appointed under chapter 34.12 RCW. A hearing before an administrative law judge under this section shall be conducted as a contested case under chapter 34.04 RCW. At the hearing, the administrative law judge shall make an initial decision determining whether the specific placement decision is in the best interests of the resident and was otherwise proper. The burden of proof shall be on the department to show that the specific placement decision is in the best interests of the resident. Any review of the administrative law judge's initial decision by the secretary when he or she makes the final decision shall be done on the same basis as specified under RCW 34.04.130 (5) and (6) for superior court review of an administrative decision and in addition findings and inferences to be sustained must be supported by substantial evidence. The secretary cannot delegate the authority to make the final decision. Any person aggrieved by the final administrative decision is entitled to judicial review in accordance with the provisions of chapter 34.04 RCW governing judicial review in a contested case except that if substantial rights have been prejudiced, administrative findings, inferences, conclusions, or decisions may be reversed, modified, or remanded if not supported by substantial evidence rather than requiring them to be arbitrary or capricious))~~ consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement

advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement.

Sec. 144. Section 16, chapter 20, Laws of 1973 and RCW 72.66.044 are each amended to read as follows:

Any proceeding involving an application for a furlough shall not be deemed (~~a "contested case"~~) an adjudicative proceeding under the provisions of chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act.

Sec. 145. Section 74.08.080, chapter 26, Laws of 1959 as last amended by section 58, chapter 202, Laws of 1988 and RCW 74.08.080 are each amended to read as follows:

~~((In the event an appellant feels himself aggrieved by the decision rendered in the hearing provided for in RCW 74.08.070, he shall have the right to petition the superior court for judicial review in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Either party may seek appellate review of the decision of the superior court: PROVIDED, That))~~ (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for aid to families with dependent children or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3)(a) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected ((of the appellant)) from the person and no bond shall be required on any ((review under this chapter)) appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorney's fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for aid to families with dependent children or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the ((initial departmental-county)) local community services office decision.

Sec. 146. Section 2, chapter 152, Laws of 1979 ex. sess. as amended by section 7, chapter 283, Laws of 1987 and RCW 74.09.210 are each amended to read as follows:

(1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or

attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A willful false statement;
- (b) By willful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. Section 96 of this act governs notice of a civil fine and provides the right to an adjudicative proceeding.

~~(3) ((All orders of the department assessing civil penalties shall become final twenty days after the same have been served unless a hearing is requested.~~

~~(4))~~ A criminal action need not be brought against a person for that person to be civilly liable under this section.

~~((5))~~ (4) In all proceedings under this section, service, ~~((hearings,))~~ adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

~~((6))~~ (5) Civil penalties shall be deposited in the general fund upon their receipt.

Sec. 147. Section 82, chapter 155, Laws of 1979 as last amended by section 70, chapter 505, Laws of 1987 and RCW 74.13.036 are each amended to read as follows:

(1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall, by January 1, 1986, develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure

the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the alternative residential placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

The plan and procedures required under this subsection shall be submitted to the appropriate standing committees of the legislature by January 1, 1986.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

~~(4) ((The secretary shall develop procedures in accordance with chapter 34.04 RCW for addressing violations and misunderstandings concerning the implementation of chapters 13.32A and 13.34 RCW.~~

~~(5))~~ The secretary shall submit a quarterly report to the appropriate local government entities.

~~((6))~~ (5) Where appropriate, the department shall request opinions from the attorney general regarding correct construction of these laws.

Sec. 148. Section 10, chapter 63, Laws of 1971 ex. sess. as amended by section 141, chapter 7, Laws of 1985 and RCW 74.13.127 are each amended to read as follows:

Voluntary amendments of any support agreement entered into pursuant to ~~((RCW 26.32.115 before January 1, 1985, or))~~ RCW 26.33.320 and

74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act.

~~((The secretary shall seek voluntary amendment of any such agreement before invoking the additional procedures provided for in this section:~~

~~Whenever the secretary, having found an adoptive parent declines to agree to a voluntary amendment, wishes to enter an order increasing or decreasing the level of a payment or payments for the support of an adoptive child under RCW 26.33.320 and 74.13.100 through 74.13.145, he shall notify the adoptive parent of the action the secretary proposed to take in writing by certified mail or personal service stating the grounds upon which the secretary proposes such action:~~

~~Within thirty days from the receipt of such notice the adoptive parent or parents may serve upon the official of the department sending such notice a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, such officer shall fix a hearing date, which date shall be not later than thirty-five days from the receipt by him of such request for hearing. The matter shall be heard on such date or on such date to which the matter is continued by agreement of the parties. Such official shall also notify the committee designated by the secretary to advise him on child welfare of the filing of such request not less than twenty-five days before the hearing date. If the adoptive parent agrees, a member of such committee may attend the hearing:~~

~~If no request for hearing is made within the time specified, the proposed action shall be taken and the agreement between the adoptive parent and the state shall be deemed amended accordingly.~~

~~It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of the decision:~~

~~The secretary shall promulgate and publish rules governing the conduct of such hearings, including provision for confidentiality:~~

~~In all other respects such proceedings shall be conducted by the department pursuant to RCW 74.08.070 and regulations issued pursuant thereto. The adoptive parent shall have a right of appeal as provided in RCW 74.08.080. If the decision of the secretary or the superior court is~~

~~made in favor of the appellant, adoption support shall be paid from the effective date of the action or decision appealed from.~~

~~Except as otherwise specifically provided for in this section the rules adopted by the secretary and the manner of carrying on the proceedings shall be in accord with the provisions of Title 34 RCW:))~~

Sec. 149. Section 13, chapter 172, Laws of 1967 as last amended by section 12, chapter 118, Laws of 1982 and RCW 74.15.130 are each amended to read as follows:

~~((+)) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses(;~~

~~(2) Whenever the secretary shall have reasonable cause to believe that grounds for denial, suspension or revocation of a license exist or that a licensee has failed to qualify for renewal of a license he shall notify the licensee in writing by certified mail, stating the grounds upon which it is proposed that the license be denied, suspended, revoked or not renewed.~~

~~Within thirty days from the receipt of notice of the grounds for denial, suspension, revocation or lack of renewal, the licensee may serve upon the secretary a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, the secretary shall fix a date upon which the matter may be heard. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of his decision. The secretary shall promulgate and publish rules governing the conduct of hearings.~~

~~Except as specifically provided above, the rules adopted and the hearings conducted shall be in accordance with Title 34 RCW (Administrative Procedure Act)). Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

Sec. 150. Section 12, chapter 194, Laws of 1983 and RCW 74.18.120 are each amended to read as follows:

(1) Any person aggrieved by a decision, action, or inaction of the department or its agents may request, and shall receive from the department, an administrative review and redetermination of that decision, action, or inaction.

(2) After completion of an administrative review, an applicant or client aggrieved by a decision, action, or inaction of the department or its agents

may request, and shall be granted, an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter ~~((34.04))~~ 34.05 RCW by an administrative law judge.

(3) Final decisions of administrative hearings shall be the subject of appeal under RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598.

(4) In the event of an appeal from the final decision of an administrative hearing in which the department has overruled the proposed decision by an administrative law judge, the following terms shall apply for an appeal under RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598: (a) Upon request a copy of the transcript and evidence from the administrative hearing shall be made available without charge to the appellant; (b) the appellant shall not be required to post bond or pay any filing fee; and (c) an appellant receiving a favorable decision upon appeal shall be entitled to reasonable attorney's fees and costs.

Sec. 151. Section 2, chapter 164, Laws of 1971 ex. sess. as last amended by section 4, chapter 276, Laws of 1985 and RCW 74.20A.020 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person under the age of twenty—one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation.

(6) "Administrative order" means any determination, finding, decree, or order for support ~~((issued by the department))~~ pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist and continue as provided for in RCW 26.16.205 until the relationship is terminated by death or dissolution of marriage.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico.

Sec. 152. Section 25, chapter 183, Laws of 1973 1st ex. sess. as last amended by section 10, chapter 275, Laws of 1988 and RCW 74.20A.055 are each amended to read as follows:

(1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in ~~((a hearing held by the department))~~ an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future for such period of time as the child or children of said responsible parent or parents are in need. ~~((Said))~~ The hearing shall be held pursuant to RCW 74.20A.055, chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the rules ~~((and regulations))~~ of the department~~((, which shall provide for a fair hearing))~~.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days

from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than twenty days from the date of service to ~~((request in writing a hearing, which request))~~ file an application for an adjudicative proceeding. The application shall be served upon the department by registered or certified mail or personally. If no such ((request)) application is made, the notice and finding of responsibility shall become final, and the debt created therein shall be subject to collection action as authorized under this chapter. If a timely ((request)) application is made, the execution of notice and finding of responsibility shall be stayed pending the ((decision on such hearing)) entry of the final administrative order. If no timely written ~~((request for a hearing))~~ application has previously been made, the responsible parent may petition the secretary or the secretary's designee at any time for ~~((a hearing))~~ an adjudicative proceeding as provided for in this section upon a showing of good cause for the failure to make a timely ~~((request for hearing))~~ application. The filing of the petition for ~~((a hearing))~~ an adjudicative proceeding after the twenty-day period shall not affect any collection action previously taken under this chapter. The granting of ~~((a request for the hearing shall))~~ an application after the twenty-day period operates as a stay on any future collection action, pending ~~((the final decision of the secretary or the secretary's designee on the hearing))~~ entry of the final administrative order. Moneys withheld as a result of collection action in effect at the time of the granting of the ~~((request for the hearing))~~ application after the twenty-day period shall be delivered to the department and shall be held in trust by the department pending ~~((the final order of the secretary or during the pendency of any appeal to the courts made under chapter 34.04 RCW))~~ entry of the final administrative order. The department may petition the ~~((administrative law judge))~~ presiding or reviewing officer to set temporary current and future support to be paid beginning with the month in which the ~~((petition for an untimely hearing))~~ application after the twenty-day period is granted. The ~~((administrative law judge))~~ presiding or reviewing officer shall order payment of temporary current and future support if appropriate in an amount determined pursuant to the child support schedule adopted under RCW 26.19.040. In the event the responsible parent does not make payment of the temporary current and future support as ordered by the ~~((hearing examiner))~~ presiding or reviewing officer, the department may take collection action pursuant to chapter 74.20A RCW during the pendency of the ~~((hearing))~~ adjudicative proceeding or thereafter

to collect any amounts owing under the order. Temporary current and future support paid, or collected, during the pendency of the ~~((hearing or appeal))~~ adjudicative proceeding shall be disbursed to the custodial parent or as otherwise appropriate when received by the department. If the final ~~((decision of the department, or of the courts on appeal;))~~ administrative order is that the department has collected from the responsible parent other than temporary current or future support, an amount greater than such parent's past support debt, the department shall promptly refund any such excess amount to such parent.

(3) Hearings may be held in the county of residence or other place convenient to the responsible parent. ~~((Any such hearing shall be a "contested case" as defined in RCW 34.04.010:))~~ The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future for such period of time as the child or children of the responsible parent are in need, all computable on the basis of the need alleged. The notice and finding shall also include a statement of the name of the recipient or custodian and the name of the child or children for whom need is alleged; and/or a statement of the amount of periodic future support payments as to which financial responsibility is alleged.

(4) The notice and finding shall include a statement that the responsible parent may object to all or any part of the notice and finding, and ~~((request a hearing))~~ file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future.

The notice and finding shall include a statement that, if the responsible parent fails in timely fashion to ~~((request a hearing))~~ file an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt shall be subject to collection action; a statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

(5) If ~~((a hearing is requested, it shall be promptly scheduled, in no more than thirty days. The hearing, including a hearing on prospective modification, shall be conducted by an administrative law judge appointed under chapter 34.12 RCW:~~

~~After evidence has been presented at hearings conducted by the administrative law judge, the administrative law judge shall enter an initial decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The administrative law judge shall file the original of the~~

~~initial decision and order, signed by the administrative law judge, with the secretary or the secretary's designee. Copies of the initial decision and order shall be mailed by the administrative law judge to the department and to the appellant by certified mail to the last known address of each party. Within thirty days of filing, either the appellant or the department may file with the secretary or the secretary's designee a written petition for review of the initial decision and order. The petition for review shall set forth in detail the basis for the requested review and shall be mailed by the petitioning party to the other party by certified or registered mail to the last known address of the party.~~

~~The petition shall be based on any of the following causes materially affecting the substantial rights of the petitioner:~~

~~(a) Irregularity in the proceedings of the administrative law judge or adverse party, or any order of the administrative law judge, or abuse of discretion, by which the moving party was prevented from having a fair hearing;~~

~~(b) Misconduct of the prevailing party;~~

~~(c) Accident or surprise which ordinary prudence could not have guarded against;~~

~~(d) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the hearing;~~

~~(e) That there is no evidence or reasonable inference from the evidence to justify the decision, or that it is contrary to law;~~

~~(f) Error in mathematical computation;~~

~~(g) Error in law occurring at the hearing and objected to at the time by the party making the application;~~

~~(h) That the moving party is unable to perform according to the terms of the order without further clarification;~~

~~(i) That substantial justice has not been done;~~

~~(j) Fraud or misstatement of facts by any witness, which materially affects the debt;~~

~~(k) Clerical mistakes in the decision arising from oversight or omission;~~

~~or~~

~~(l) That the decision and order entered because the responsible parent failed to appear at the hearing should be vacated and the matter be remanded for a hearing upon showing of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~In the event no petition for review is made as provided in this subsection by any party, the initial decision and order of the administrative law judge is final as of the date of filing and becomes the decision and order of the secretary. No appeal may be taken therefrom to the courts and the debt created is subject to collection action as authorized by this chapter.~~

~~After the receipt of a petition for review, the secretary or the secretary's designee shall consider the initial decision and order, the petition or petitions for review, the record or any part thereof, and such additional evidence and argument as the secretary or the secretary's designee may in his or her discretion allow. The secretary or the secretary's designee may remand the proceedings to the administrative law judge for additional evidence or argument. The secretary or the secretary's designee may deny review of the initial decision and order and thereupon deny the petition or petitions at which time the initial decision and order shall be final as of the date of the denial and all parties shall forthwith be notified, in writing, of the denial, by certified mail to the last known address of the parties. Unless the petition is denied, the secretary or the secretary's designee shall review the initial decision and order and shall make the final decision and order of the department. The final decision and order shall be in writing and shall contain findings of fact and conclusions of law as to each contested issue of fact and law. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal by certified mail to the last known address of the party. The decision and order shall authorize collection action, as appropriate, under this chapter.~~

~~(6) The administrative law judge in his or her initial decision, or the secretary or the secretary's designee in review of the initial decision,)) an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule adopted under RCW 26.19.040 in making these determinations, the ((administrative law judge, and the secretary or the secretary's designee,)) presiding or reviewing officer shall comply with RCW 26.19.020 (4), (5), and (6).~~

~~If the responsible parent fails to ((appear at)) attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the ((administrative law judge)) presiding officer shall enter an initial decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. ((Within thirty days of entry of said decision and order, the responsible parent may petition the secretary or the secretary's designee to vacate said decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~(7)) (6) The final ((decision entered pursuant to this section shall be entered as a decision and)) order ((and shall limit the support debt to the amounts stated in said decision: PROVIDED, That said decision)) establishing liability and/or future periodic support payments shall be superseded~~

upon entry of a superior court order for support to the extent the superior court order is inconsistent with the ~~((hearing))~~ administrative order ~~((or decision))~~: PROVIDED ~~((FURTHER))~~, That in the absence of a superior court order, either the responsible parent or the department may petition the secretary or his designee for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances, to require the other party to appear and show cause why the ~~((de-
cision))~~ order previously entered should not be prospectively modified. Said order to appear and show cause together with a copy of the petition and affidavit upon which the order is based shall be served in the manner of a summons in a civil action or by certified mail, return receipt requested, on the other party by the petitioning party. ~~((A hearing shall be set not less than fifteen nor more than thirty days from the date of service, unless ex-
tended for good cause shown.))~~ Prospective modification may be ordered, but only upon a showing of good cause and material change of circumstances. ~~((The decision and order for prospective modification entered by the administrative law judge shall be an initial decision subject to review by the secretary or the secretary's designee as provided for in this section.~~

~~((8))~~ (7) The ~~((administrative law judge, in making the initial decision and the secretary or the secretary's designee in the final decision determin-
ing liability and/or future periodic support payments,))~~ presiding or re-
viewing officer shall order support payments under the child support schedule adopted under RCW 26.19.040.

~~((9))~~ (8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by ~~((the administrative law judge, or the secretary or sec-
retary's designee))~~ a presiding or reviewing officer.

~~((10))~~ (9) "Need" as used in this section shall mean the necessary costs of food, clothing, shelter, and medical attendance for the support of a dependent child or children. The amount determined by reference to the child support schedule adopted under RCW 26.19.040, shall be a rebuttable presumption of the alleged responsible parent's ability to pay and the need of the family: PROVIDED, That such responsible parent shall be presumed to have no ability to pay child support under this chapter from any income received from aid to families with dependent children, supplemental security income, or continuing general assistance.

Sec. 153. Section 6, chapter 164, Laws of 1971 ex. sess. as last amended by section 5, chapter 171, Laws of 1979 ex. sess. and RCW 74.20A.060 are each amended to read as follows:

Twenty-one days after receipt or refusal of notice of debt under provisions of RCW 74.20A.040, or twenty-one days after service of notice and finding of financial responsibility, or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270 a lien may be asserted by the secretary upon the real or personal property of the debtor. The

claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located. A lien against earnings shall attach and be effective subject to service requirements of RCW 74.20A.070 upon filing with the county auditor of the county in which the employer does business or maintains an office or agent for the purpose of doing business.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless a written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state or unless a determination has been made in ~~((a fair hearing))~~ an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied.

Sec. 154. Section 8, chapter 164, Laws of 1971 ex. sess. as last amended by section 6, chapter 276, Laws of 1985 and RCW 74.20A.080 are each amended to read as follows:

Twenty-one days after service of a notice of debt as provided for in RCW 74.20A.040, or twenty-one days after service of the notice and finding of financial responsibility or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270, the secretary is hereby authorized to issue to any person, firm, corporation, association, political subdivision, or department of the state, an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to said debtor. The order to withhold and deliver shall state the amount of the support debt accrued, and shall state in summary the terms of RCW 74.20A.090 and 74.20A.100. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made is hereby required to answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the

matters inquired of therein. The secretary may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. In the event there is in the possession of any such person, firm, corporation, association, political subdivision, or department of the state any property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall, after the twenty day period, upon demand, be delivered forthwith to the secretary. The secretary shall hold said property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement of the order to withhold and deliver. Delivery to the secretary shall serve as full acquittance and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter. The foregoing is subject to the exemptions contained in RCW 74.20A.090.

The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for ~~((a hearing))~~ judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for support moneys.

Any person, firm, corporation, association, or political subdivision, or department of the state required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver.

Sec. 155. Section 12, chapter 164, Laws of 1971 ex. sess. as amended by section 3, chapter 41, Laws of 1983 1st ex. sess. and RCW 74.20A.120 are each amended to read as follows:

In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold and deliver or any other notice or document authorized by this chapter shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely (~~request, shall have~~) application, has a right to ((a contested hearing under)) an adjudicative proceeding governed by chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200.

Sec. 156. Section 18, chapter 171, Laws of 1979 ex. sess. as last amended by section 14, chapter 276, Laws of 1985 and RCW 74.20A.270 are each amended to read as follows:

The secretary may issue a notice of support debt to any person, firm, corporation, association, or political subdivision of the state of Washington or any officer or agent thereof who has violated RCW 74.20A.100, who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW, if the support moneys have not been remitted to the department as required by law.

The notice shall describe the claim of the department, stating the legal basis for the claim and shall provide sufficient detail to enable the person, firm, corporation, association, or political subdivision or officer or agent thereof upon whom service is made to identify the support moneys in issue or the specific violation of RCW 74.20A.100 that has occurred. The notice

may also make inquiry as to relevant facts necessary to the resolution of the issue.

The notice may be served by certified mail, return receipt requested, or in the manner of a summons in a civil action. Upon service of the notice all moneys not yet disbursed or spent or like moneys to be received in the future are deemed to be impounded and shall be held in trust pending answer to the notice and any ~~((hearing which is requested))~~ adjudicative proceeding.

The notice shall be answered under oath and in writing within twenty days of the date of service, which answer shall include true answers to the matters inquired of in the notice. The answer shall also either acknowledge the department's right to the moneys or ~~((request an administrative hearing))~~ application for an adjudicative proceeding to contest the allegation that RCW 74.20A.100 has been violated, or determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the rules of the department ~~((and shall be a contested case as provided for in chapter 34.04 RCW))~~. The burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent, is on the department.

If no answer is made within the twenty days, the department's claim shall be assessed and determined and subject to collection action as a support debt pursuant to chapter 74.20A RCW. Any such debtor may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for ~~((a hearing))~~ an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending ~~((final decision of the secretary or the secretary's designee or the courts on any appeal made pursuant to chapter 34.04 RCW))~~ the final administrative order. Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future to which the department may have a claim, shall be held in trust pending the final ~~((decision and appeal; if any))~~ order, to be disbursed in accordance with the final ~~((decision))~~ order. The secretary or the secretary's designee shall condition the stay to provide for the trust.

If the ~~((hearing))~~ petition is granted ~~((it shall be an administrative hearing))~~ the issue in the proceeding is limited to the determination of the ownership of the moneys claimed in the notice of debt. The right to ~~((the hearing))~~ an adjudicative proceeding is conditioned upon holding of any funds not yet disbursed or expended or to be received in the future in trust

pending the final order in these proceedings (~~((or during any appeal made to the courts))~~). The (~~((secretary or the secretary's designee))~~) presiding or reviewing officer shall enter an appropriate order providing for the terms of the trust.

~~((The hearing shall be a contested case as provided for in chapter 34.04 RCW and shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department. The hearing shall be promptly scheduled within thirty days from the date of receipt of the answer by the department. The hearing shall be conducted by a duly qualified hearing examiner appointed for that purpose. Hearings may be held in the county of residence of the debtor or other place convenient to the debtor.))~~

If the debtor fails to (~~(appear at)~~) attend or participate in the hearing or other stage of an adjudicative proceeding, the (~~(hearing examiner)~~) presiding officer shall, upon showing of valid service, enter an (~~((initial decision and))~~) order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action. (~~((Within thirty days of entry of the decision and order the debtor may petition the secretary or the secretary's designee to vacate the decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~The hearing and review process shall be as provided for in RCW 74.20A.055:))~~

If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in (~~(these proceedings))~~) an adjudicative proceeding, the judgment shall supersede the final administrative order (~~(in these proceedings))~~). Any debt determined by the superior court in excess of the amount determined by the final administrative order (~~(in these proceedings))~~) shall be the property of the department as assigned under 42 U.S.C. 602(A)(26)(a), RCW 74.20.040, 74.20A.250, 74.20.320, or 74.20.330. The department may, despite any final administrative order (~~(in these proceedings))~~), take action pursuant to chapter(~~(s)~~) 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

If public assistance moneys have been paid to a parent for the benefit of that parent's minor dependent children, debt under this chapter shall not be incurred by nor at any time be collected from that parent because of that payment of assistance. Nothing in this section prohibits or limits the department from acting pursuant to RCW 74.20.320 and this section to assess a debt against a recipient or ex-recipient for receipt of support moneys paid in satisfaction of the debt assigned under RCW 74.20.330 which have been assigned to the department but were received by a recipient or ex-recipient from another responsible parent and not remitted to the department. To collect these wrongfully retained funds from the recipient, the department may not take collection action in excess of ten percent of the grant payment

standard during any month the public assistance recipient remains in that status unless required by federal law. Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section.

Sec. 157. Section 21, chapter 171, Laws of 1979 ex. sess. and RCW 74.20A.290 are each amended to read as follows:

Whenever any person (~~requests an administrative hearing~~) files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the (~~request for hearing~~) application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the (~~action~~) administrative proceeding and any (~~appeal made therefrom to the courts~~) judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and (~~34.04~~) 34.05 RCW.

Sec. 158. Section 10, chapter 434, Laws of 1987 and RCW 74.21.100 are each amended to read as follows:

The executive committee shall direct the department of social and health services and the employment security department to adopt rules providing due process of law protections to applicants for and recipients of family independence program benefits. The requirements shall confer protections no less than those which the federal statutes and regulations confer on participants in the food stamp, aid to families with dependent children, and work incentive programs. The protections shall include, but are not limited to, the following:

(1) The departments shall provide adequate advance written notice to applicants or enrollees of any agency action to deny, award, reduce, terminate, increase, or suspend benefits or to change the manner or form of payment or of any agency action requiring the enrollee to take any action. Adequate notice includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific rules supporting the action, an explanation of the individual's right to (~~request~~) file an (administrative fair hearing) application for an adjudicative proceeding, how to (~~request one~~) file an application, and the circumstances under which assistance is continued pending (~~such a hearing if requested~~) the adjudicative proceeding if an application for one is filed.

(2) Advance notice must be mailed to enrollees at least ten days prior to the date on which the proposed action would become effective.

(3) An applicant or enrollee aggrieved by an action or decision of the departments, including requiring or denying participation in a work, training, or education activity, has the right to ~~((request a fair hearing to be conducted by the office of administrative hearings in accordance with))~~ file an application for an adjudicative proceeding under RCW 74.08.080 and chapters 34.05 and 34.12 ((and 34.04)) RCW. The aggrieved person is entitled to all fair hearing rights ~~((provided under RCW 74.08.070))~~ and to the right of judicial review therefrom as provided in RCW 74.08.080.

(4) When an enrollee ~~((requests a hearing))~~ files an application for an adjudicative proceeding during the advance notice period, the departments shall not implement the challenged action until a written ~~((decision))~~ adjudicative order is rendered after a hearing. The advance notice period is the period prior to the effective date of the proposed action or ten days from the date of adequate written notice, whichever is later. Any assistance received pending a hearing or ~~((hearing decision))~~ adjudicative order may be considered to be an overpayment if the ~~((decision))~~ adjudicative order is against the enrollee.

(5) Financial, food stamp, and medical assistance shall be furnished to eligible individuals in a timely manner and shall be continued regularly to all eligible individuals until they are found to be ineligible. Applications should be disposed of as soon as possible in accordance with 7 C.F.R. Sec. 273.2 (g) and (i) and 45 C.F.R. Sec. 206.10 and no later than thirty days from the date of application unless good cause applies. Prior to denial or termination of family independence program cash or noncash benefits, each family's eligibility for financial assistance, medical assistance, and food stamp benefits shall be determined.

Sec. 159. Section 78, chapter 177, Laws of 1980 as amended by section 40, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.780 are each amended to read as follows:

(1) Within ~~((thirty))~~ twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request in writing that the secretary review such determination. The request shall be signed by the contractor or the licensed administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which the contractor intends to rely to support its position shall be included with the request.

(2) After receiving a request meeting the above criteria, the secretary or his designee will contact the contractor to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than ninety days after a properly completed request is received unless both parties agree in writing to a specified later date.

(3) The contractor and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the contractor may attend and participate. The contractor shall provide to the department in advance of the conference any documentation on which it intends to rely to support its contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than ~~((thirty))~~ twenty-eight days after the initial session unless both parties agree in writing to a specific later date.

(4) A written decision by the secretary will be furnished to the contractor within sixty days after the conclusion of the conference.

(5) If the contractor desires review of an adverse decision of the secretary, it shall within ~~((thirty))~~ twenty-eight days following receipt of such decision ~~((request a fair hearing in writing in accordance with the provisions of chapter 34.04 RCW. A request for fair hearing shall satisfy the criteria for a review request as set forth in subsection (1) of this section))~~ file a written application for an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

Sec. 160. Section 4, chapter 173, Laws of 1986 as last amended by section 3, chapter 272, Laws of 1988 and RCW 75.20.130 are each amended to read as follows:

(1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by either the department of fisheries or the department of wildlife under the authority granted in RCW 75.20.103 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020.

(6) (a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW pertaining to procedures in ~~((contested cases))~~ adjudicative proceedings.

Sec. 161. Section 5, chapter 173, Laws of 1986 and RCW 75.20.140 are each amended to read as follows:

(1) In all appeals over which the hydraulic appeals board has jurisdiction, a party taking an appeal may elect either a formal or informal hearing. Such election shall be made according to the rules of practice and procedure to be adopted by the hydraulic appeals board. In the event that appeals are taken from the same decision, order, or determination, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter ~~((34.04))~~ 34.05 RCW.

(3) In all appeals involving a formal hearing, the hydraulic appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(5) Judicial review of a decision of the hydraulic appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598.

Sec. 162. Section 37, chapter 100, Laws of 1986 and RCW 76.04.630 are each amended to read as follows:

There is created a landowner contingency forest fire suppression account which shall be a separate account in the state treasury. This account shall be for the purpose of paying emergency fire costs incurred or approved by the department in the suppression of forest fires. When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may be available for emergency fire suppression costs. Moneys spent from this account shall be

by appropriation. The department shall transmit to the state treasurer for deposit in the landowner contingency forest fire suppression account any moneys paid out of the account which are later recovered, less reasonable costs of recovery, which moneys may be expended for purposes set forth herein during the current biennium, without reappropriation.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating landowners at rates to be established by the department, but not to exceed ten cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of two million dollars: PROVIDED, That the department may establish a minimum assessment for ownership parcels containing less than thirty acres. The maximum assessment for these parcels shall not exceed the fees levied on a thirty-acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres or on each parcel of tax exempt lands of less than ten acres. The assessments with respect to forest lands in western and eastern Washington may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made, and may be collected as directed by the department in the same manner as forest fire protection assessments. This account shall be held by the state treasurer who is authorized to invest so much of the account as is not necessary to meet current needs. Any interest earned on moneys from the account shall be deposited in and remain a part of the account, and shall be computed as part of the same in determining the balance thereof. Interfund loans to and from this account are authorized at the then current rate of interest as determined by the state treasurer, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or any interested party, serves a request for a hearing before the department. The hearing shall constitute ~~((a-contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and any appeal therefrom shall be to the superior court of Thurston county.

Sec. 163. Section 8, chapter 137, Laws of 1974 ex. sess. as amended by section 5, chapter 200, Laws of 1975 1st ex. sess. and RCW 76.09.080 are each amended to read as follows:

(1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or ~~((willful))~~ willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be ~~((a contested case))~~ an adjudicative proceeding within the meaning of chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

Sec. 164. Section 22, chapter 137, Laws of 1974 ex. sess. as last amended by section 109, chapter 287, Laws of 1984 and RCW 76.09.220 are each amended to read as follows:

(1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.240: PROVIDED, That such

compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department.

(8) (a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW pertaining to procedures in ~~((contested cases))~~ adjudicative proceedings.

Sec. 165. Section 23, chapter 137, Laws of 1974 ex. sess. and RCW 76.09.230 are each amended to read as follows:

(1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter ~~((34.04))~~ 34.05 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598.

Sec. 166. Section 18, chapter 64, Laws of 1970 ex. sess. and RCW 78.44.170 are each amended to read as follows:

Appeals from determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter ~~((34.04))~~ 34.05 RCW), ~~((as now or hereafter amended))~~ and shall be considered ~~((a contested case))~~ an adjudicative proceeding within the meaning of the Administrative Procedure Act, ~~((f))~~ chapter ~~((34.04))~~ 34.05 RCW ~~((h))~~.

Sec. 167. Section 29, chapter 253, Laws of 1983 and RCW 78.52.463 are each amended to read as follows:

(1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the committee. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the committee has

first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notification within ten days of service of the notice: PROVIDED, That the committee may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the committee after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the committee within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The committee or its chairman have the authority to stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute ~~((a contested case hearing))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 168. Section 50, chapter 146, Laws of 1951 as amended by section 27, chapter 253, Laws of 1983 and RCW 78.52.470 are each amended to read as follows:

Any person adversely affected by any order of the committee may, within thirty days from the effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the committee shall accrue in any court to any person unless the person makes application for a hearing as herein provided. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute ~~((a contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions.

Sec. 169. Section 4, chapter 161, Laws of 1977 ex. sess. and RCW 79.72.040 are each amended to read as follows:

(1) The management program for the system shall be administered by the department. The department shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules (~~and regulations~~), in accord with chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules (~~and regulations~~) for a specific river in the system, the department shall hold at least one public hearing in the general locale of the river under consideration. The hearing may constitute the hearing required by chapter 34.05 RCW. The department shall cause a brief summary of the proposed rules (~~and regulations~~) to be published twice in a newspaper of general circulation in the area (~~which~~) that includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the department shall also provide notice of the hearings, rules, (~~regulations~~;) and decisions of the department to radio and television stations and major local newspapers in the areas (~~which~~) that include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the department is authorized, subject to approval by majority vote of the members of the committee, to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas, boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The department is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The department is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules (~~and regulations~~) adopted under this section or agreements made under the provisions of this chapter.

Sec. 170. Section 2, chapter 2, Laws of 1983 2nd ex. sess. and RCW 79.90.105 are each amended to read as follows:

The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights. This permission is subject to applicable local regulation governing construction, size, and length of the dock. This permission may be revoked by the department upon finding of public necessity which is limited to the protection of waterward access or ingress rights of other landowners or public health and safety. The revocation may be appealed as ~~((a-contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law.

Sec. 171. Section 106, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.210 are each amended to read as follows:

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest: PROVIDED, That the purpose of this section is to remove the prohibition contained in RCW 79.94.150 regarding the sale of second class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150, the department of natural resources may sell second class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board of natural resources has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum depth of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days of the date the department notified the owner regarding the price. The board of tax appeals shall review such cases in ~~((a-contested case))~~ an adjudicative proceeding as described in chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598.

Sec. 172. Section 17, chapter 371, Laws of 1977 ex. sess. and RCW 80.50.075 are each amended to read as follows:

(1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility; and
- (d) The degree to which the proposed energy facility represents a change in use of the proposed site

are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of RCW 80.50.071; nor

(b) Hold ~~((a contested case hearing))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

Sec. 173. Section 9, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.090 are each amended to read as follows:

(1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: PROVIDED, That the place of such public hearing shall be as close as practical to the proposed site.

(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as ~~((a contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

Sec. 174. Section 10, chapter 45, Laws of 1970 ex. sess. as last amended by section 8, chapter 371, Laws of 1977 ex. sess. and RCW 80.50.100 are each amended to read as follows:

(1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(a) Approve the application and execute the draft certification agreement; or

(b) Reject the application; or

(c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the (~~contested case~~) adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

Sec. 175. Section 45, chapter 26, Laws of 1967 ex. sess. as amended by section 6, chapter 222, Laws of 1988 and RCW 82.03.160 are each amended to read as follows:

In all appeals involving a formal hearing the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter ~~((34.04))~~ 34.05 RCW; and the board, and each member thereof, or its tax referees, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(2), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees shall be presented only in open hearing.

Sec. 176. Section 47, chapter 26, Laws of 1967 ex. sess. as amended by section 9, chapter 46, Laws of 1982 1st ex. sess. and RCW 82.03.180 are each amended to read as follows:

Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: AND PROVIDED FURTHER, That no review from a decision made pursuant to RCW 82.03.130(1) may be obtained by a taxpayer unless within the petition period provided by RCW ~~((34.04.130))~~ 34.05.542 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130(5) shall have the right of review from a decision made pursuant to RCW 82.03.130(5).

Sec. 177. Section 4, chapter 139, Laws of 1967 ex. sess. and RCW 82.34.040 are each amended to read as follows:

The department may adopt such rules ~~((and regulations))~~ as it deems necessary for the administration of this chapter subject to the provisions of RCW ~~((34.04.020 through 34.04.060))~~ 34.05.310 through 34.05.395. Such rules ~~((and regulations))~~ shall not abridge the authority of the appropriate control agency as provided in this chapter or any other law.

Sec. 178. Section 13, chapter 449, Laws of 1985 and RCW 84.26.130 are each amended to read as follows:

Any decision by a local review board on an application for classification as historic property eligible for special valuation may be appealed to superior court under RCW (~~(34.04.130)~~) 34.05.510 through 34.05.598 in addition to any other remedy at law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization.

Sec. 179. Section 9, chapter 187, Laws of 1974 ex. sess. as last amended by section 25, chapter 204, Laws of 1984 and RCW 84.33.200 are each amended to read as follows:

(1) The legislature shall review the system of distribution and allocation of all timber excise tax revenues in January~~(:)~~ 1975 and each year thereafter to provide a uniform and equitable distribution and allocation of such revenues to the state and local taxing districts.

(2) In order to allow legislative review of the rules (~~and regulations~~) to be adopted by the department of revenue establishing the stumpage values provided for in RCW 84.33.091, such rules (~~and regulations~~) shall be effective not less than sixty days after transmitting to the staffs of the senate and house ways and means committees (or their successor committees) the same proposed rules (~~and regulations as shall~~) as have been previously filed with the office of the code reviser pursuant to RCW (~~(34.04.025(1)(a))~~) 34.05.320.

(3) In the event that a permanent timber tax rate is not set in 1979, a joint timber tax advisory committee shall be established. The joint advisory committee shall be composed of members of the house of representatives and the senate and co-chaired by a member of the house revenue committee and a member of the senate ways and means committee. The joint advisory committee shall recommend a rate level and distribution system on or before the convening of the forty-seventh legislature.

(4) The department of revenue and the department of natural resources shall make available to the revenue committees of the senate and house of representatives of the state legislature information and data, as it may be available, pertaining to the status of forest land grading throughout the state, the collection of timber excise tax revenues, the distribution and allocation of timber excise tax revenues to the state and local taxing districts, and any other information as may be necessary for the proper legislative review and implementation of the timber excise tax system, and in addition, the departments shall provide an annual report of such matters in January of each year to such committees.

Sec. 180. Section 20, chapter 233, Laws of 1967 as amended by section 6, chapter 216, Laws of 1979 ex. sess. and RCW 90.14.200 are each amended to read as follows:

(1) All matters relating to the implementation and enforcement of this chapter by the department of ecology shall be carried out in accordance with chapter ~~((34.04))~~ 34.05 RCW, ~~((as it now exists or hereafter shall be amended))~~ the Administrative Procedure Act, except where the provisions of this chapter expressly conflict ~~((herewith))~~ with chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 ~~((hereof))~~ are ~~((²contested cases²))~~ adjudicative proceedings within the meaning of chapter ~~((34.04))~~ 34.05 RCW. Final decisions of the department of ecology in these proceedings are subject to review in accordance with chapter 43.21B RCW.

(2) RCW 90.14.130 provides nonexclusive procedures for determining a relinquishment of water rights under RCW 90.14.160, 90.14.170, and 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in, among other proceedings, general adjudication proceedings initiated under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall apply to litigation involving determinations of the department of ecology under RCW 90.03.290 relating to the impairment of existing rights.

Sec. 181. Section 21, chapter 13, Laws of 1967 and RCW 90.48.230 are each amended to read as follows:

The provisions of chapter ~~((34.04 RCW, as it now exists or may be hereafter amended, shall))~~ 34.05 RCW, the Administrative Procedure Act, apply to all rule making and ~~((contested cases))~~ adjudicative proceedings authorized by or arising under the provisions of this chapter.

Sec. 182. Section 12, chapter 286, Laws of 1971 ex. sess. as amended by section 2, chapter 182, Laws of 1975 1st ex. sess. and RCW 90.58.120 are each amended to read as follows:

All rules, regulations, master programs, designations, and guidelines, issued by the department, shall be adopted or approved in accordance with the provisions of RCW ~~((34.04.025))~~ 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the approval or adoption by the department of a master program, or portion thereof, at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county auditor and city clerk. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

Sec. 183. Section 18, chapter 286, Laws of 1971 ex. sess. as last amended by section 2, chapter 292, Laws of 1986 and RCW 90.58.180 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 (~~as now or hereafter amended~~) may seek review from the shorelines hearings board by filing a request for the same within thirty days of the date of filing as defined in RCW 90.58.140(6) (~~as now or hereafter amended~~).

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: PROVIDED, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section. The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired, unless such review is to begin within thirty days of such scheduling. If at the end of the thirty day period for certification neither the department nor the attorney general has certified a request for review, the hearings board shall remove the request from its review schedule.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines hearings board and the appropriate local government within thirty days from the date the final order was filed as provided in RCW 90.58.140(6) (~~as now or hereafter amended~~).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter (~~34.04~~) 34.05 RCW pertaining to procedures in (~~contested cases~~) adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter (~~34.04~~) 34.05 RCW.

(4) Local government may appeal to the shorelines hearings board any rules, regulations, or guidelines adopted or approved by the department

within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

If the board determines that ~~((said))~~ the rule, regulation, or guideline:

- (a) Is clearly erroneous in light of the policy of this chapter; or
- (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
- (c) Is arbitrary and capricious; or
- (d) Was developed without fully considering and evaluating all material submitted to the department by the local government; or
- (e) Was not adopted in accordance with required procedures;

the board shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new rule, regulation, or guideline. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect.

(5) Rules, regulations, and guidelines shall be subject to review in superior court, if authorized pursuant to RCW ~~((34.04.070))~~ 34.05.538: PROVIDED, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section is filed within three months after the date of final decision by the shorelines hearings board.

Sec. 184. Section 19, chapter 286, Laws of 1971 ex. sess. as amended by section 3, chapter 292, Laws of 1986 and RCW 90.58.190 are each amended to read as follows:

(1) The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. Any adjustments proposed by a local government to its master program shall be forwarded to the department for review. The department shall approve, reject, or propose modification to the adjustment. If the department either rejects or proposes modification to the master program adjustment, it shall provide substantive written comments as to why the proposal is being rejected or modified.

(2) Any local government aggrieved by the department's decision to approve, reject, or modify a proposed master program or master program adjustment may appeal the department's decision to the shorelines hearings board. In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program adjustment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's adjustment in light of the policy of RCW 90.58.020 and the applicable guidelines. In an appeal relating to shorelines of state-wide significance, the

board shall uphold the decision by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines. Review by the hearings board shall be considered (~~(a contested case)~~) an adjudicative proceeding under chapter (~~(34.04)~~) 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews. Whenever possible, the review by the hearings board shall be heard within the county where the land subject to the proposed master program or master program adjustment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to the superior court of Thurston county.

(3) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program adjustment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program adjustment.

NEW SECTION. Sec. 185. The following acts or parts of acts are each repealed:

- (1) Section 7, chapter 253, Laws of 1957 and RCW 18.20.070;
- (2) Section 11, chapter 168, Laws of 1951 and RCW 18.46.100;
- (3) Section 11, chapter 237, Laws of 1967 and RCW 34.04.115;
- (4) Section 7, chapter 234, Laws of 1959, section 8, chapter 6, Laws of 1982, section 508, chapter 288, Laws of 1988 and RCW 34.05.538;
- (5) Section 9, chapter 144, Laws of 1955, section 72, chapter 141, Laws of 1979 and RCW 69.30.090;
- (6) Section 10, chapter 144, Laws of 1955, section 73, chapter 141, Laws of 1979 and RCW 69.30.100;
- (7) Section 14, chapter 267, Laws of 1955, section 23, chapter 213, Laws of 1985 and RCW 70.41.140;
- (8) Section 74.08.070, chapter 26, Laws of 1959, section 1, chapter 172, Laws of 1969 ex. sess., section 324, chapter 141, Laws of 1979, section 1, chapter 92, Laws of 1979 ex. sess., section 34, chapter 67, Laws of 1981, section 14, chapter 6, Laws of 1981 1st ex. sess. and RCW 74.08.070;
- (9) Section 3, chapter 3, Laws of 1981 2nd ex. sess. and RCW 74.09-.536; and
- (10) Section 23, chapter 228, Laws of 1963 and RCW 74.12.270.

NEW SECTION. Sec. 186. Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing

public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990.

Passed the House April 15, 1989.

Passed the Senate March 31, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 176

[Substitute House Bill No. 1056]

HERRING SPAWN ON KELP PERMITS

AN ACT Relating to herring spawn on kelp; amending RCW 15.85.020 and 75.08.230; adding a new section to chapter 75.28 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp permits shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp permits so that the management and economic health of the herring fishery may be improved.

NEW SECTION. Sec. 2. A new section is added to chapter 75.28 RCW to read as follows:

In addition to a commercial fishing license, a herring validation, and other applicable permits required under state law, a herring spawn on kelp permit is required to commercially take herring eggs which have been deposited on vegetation of any type. All herring spawn on kelp permits shall be sold at auction to the highest bidder. Bidders are required to identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all herring validation holders thirty days' notice of the auction.

Sec. 3. Section 2, chapter 457, Laws of 1985 and RCW 15.85.020 are each amended to read as follows:

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

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

SCIENTIFIC NAME	COMMON NAME
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with section 2 of this act.

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

(5) "Director" means the director of agriculture.

Sec. 4. Section 75.08.230, chapter 12, Laws of 1955 as last amended by section 230, chapter 202, Laws of 1987 and RCW 75.08.230 are each amended to read as follows:

(1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

(a) The sale of licenses required under this title;

(b) The sale of property seized or confiscated under this title;

(c) Fines and forfeitures collected under this title;

(d) The sale of real or personal property held for department purposes;

(e) Rentals or concessions of the department;

(f) Moneys received for damages to food fish, shellfish or department property; and

(g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the director shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon and salmon eggs by the department, to the extent these proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal.

(6) Moneys received by the director under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp permits by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement.

Passed the House April 15, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 177

[Substitute House Bill No. 1458]

INTRASTATE CORRECTIONS COMPACT

AN ACT Relating to the inmate exchange and custody compact; adding a new chapter to Title 72 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. This chapter shall be known and may be cited as the Washington Intrastate Corrections Compact.

NEW SECTION. Sec. 2. It is the intent of the legislature to enable and encourage a cooperative relationship between the department of corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders.

NEW SECTION. Sec. 3. The Washington intrastate corrections compact is enacted and entered into on behalf of this state by the department with any and all counties of this state legally joining in a form substantially as follows:

WASHINGTON INTRASTATE CORRECTIONS COMPACT

A compact is entered into by and among the contracting counties and the department of corrections, signatories hereto, for the purpose of maximizing the use of existing resources and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders.

The contracting counties and the department do solemnly agree that:

(1) As used in this compact, unless the context clearly requires otherwise:

(a) "Department" means the Washington state department of corrections.

(b) "Secretary" means the secretary of the department of corrections or designee.

(c) "Compact jurisdiction" means the department of corrections or any county of the state of Washington which has executed this compact.

(d) "Sending jurisdiction" means a county party to this agreement or the department of corrections to whom the courts have committed custody of the offender.

(e) "Receiving jurisdiction" means the department of corrections or a county party to this agreement to which an offender is sent for confinement.

(f) "Offender" means a person who has been charged with and/or convicted of an offense established by applicable statute or ordinance.

(g) "Convicted felony offender" means a person who has been convicted of a felony established by state law and is eighteen years of age or older, or who is less than eighteen years of age, but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110.

(h) An "offender day" includes the first day an offender is delivered to the receiving jurisdiction, but ends at midnight of the day immediately preceding the day of the offender's release or return to the custody of the sending jurisdiction.

(i) "Facility" means any state correctional institution, camp, or other unit established or authorized by law under the jurisdiction of the department of corrections; any jail, holding, detention, special detention, or correctional facility operated by the county for the housing of adult offenders; or any contract facility, operated on behalf of either the county or the state for the housing of adult offenders.

(j) "Extraordinary medical expense" means any medical expense beyond that which is normally provided by contract or other health care providers at the facility of the receiving jurisdiction.

(k) "Compact" means the Washington intrastate corrections compact.

(2)(a) Any county may make one or more contracts with one or more counties, the department, or both for the exchange or transfer of offenders pursuant to this compact. Appropriate action by ordinance, resolution, or otherwise in accordance with the law of the governing bodies of the participating counties shall be necessary before the contract may take effect. The secretary is authorized and requested to execute the contracts on behalf of the department. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving jurisdiction by the sending jurisdiction for offender maintenance, extraordinary medical and dental expenses, and any participation in or receipt by offenders of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of offender employment, if any; the disposition or crediting of any payments received by offenders on their accounts; and the crediting of proceeds from or the disposal of any products resulting from the employment;

(iv) Delivery and retaking of offenders;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving jurisdictions.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant to the contract. Nothing in any contract may be inconsistent with the compact.

(3)(a) Whenever the duly constituted authorities of any compact jurisdiction decide that confinement in, or transfer of an offender to a facility of another compact jurisdiction is necessary or desirable in order to provide adequate housing and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within a facility of the other compact jurisdiction, the receiving jurisdiction to act in that regard solely as agent for the sending jurisdiction.

(b) The receiving jurisdiction shall be responsible for the supervision of all offenders which it accepts into its custody.

(c) The receiving jurisdiction shall be responsible to establish screening criteria for offenders it will accept for transfer. The sending jurisdiction shall be responsible for ensuring that all transferred offenders meet the screening criteria of the receiving jurisdiction.

(d) The sending jurisdiction shall notify the sentencing courts of the name, charges, cause numbers, date, and place of transfer of any offender, prior to the transfer, on a form to be provided by the department. A copy of this form shall accompany the offender at the time of transfer.

(e) The receiving jurisdiction shall be responsible for providing an orientation to each offender who is transferred. The orientation shall be provided to offenders upon arrival and shall address the following conditions at the facility of the receiving jurisdiction:

- (i) Requirements to work;
- (ii) Facility rules and disciplinary procedures;
- (iii) Medical care availability; and
- (iv) Visiting.

(f) Delivery and retaking of inmates shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall deliver offenders to the facility of the receiving jurisdiction where the offender will be housed, at the dates and times specified by the receiving jurisdiction. The receiving jurisdiction retains the right to refuse or return any offender. The sending jurisdiction shall be responsible to retake any transferred offender who does not meet the screening criteria of the receiving jurisdiction, or who is refused by the receiving jurisdiction. If the receiving jurisdiction has notified the sending jurisdiction to retake an offender, but the sending jurisdiction does not do so within a seven-day period, the receiving jurisdiction may return the offender to the sending jurisdiction at the expense of the sending jurisdiction.

(g) Offenders confined in a facility under the terms of this compact shall at all times be subject to the jurisdiction of the sending jurisdiction and may at any time be removed from the facility for transfer to another facility within the sending jurisdiction, for transfer to another facility in which the sending jurisdiction may have a contractual or other right to confine offenders, for release or discharge, or for any other purpose permitted by the laws of the state of Washington.

(h) Unless otherwise agreed, the sending jurisdiction shall provide at least one set of the offender's personal clothing at the time of transfer. The sending jurisdiction shall be responsible for searching the clothing to ensure that it is free of contraband. The receiving jurisdiction shall be responsible for providing work clothing and equipment appropriate to the offender's assignment.

(i) The sending jurisdiction shall remain responsible for the storage of the offender's personal property, unless prior arrangements are made with the receiving jurisdiction. The receiving jurisdiction shall provide a list of allowable items which may be transferred with the offender.

(j) Copies or summaries of records relating to medical needs, behavior, and classification of the offender shall be transferred by the sending jurisdiction to the receiving jurisdiction at the time of transfer. At a minimum, such records shall include:

(i) A copy of the commitment order or orders legally authorizing the confinement of the offender;

(ii) A copy of the form for the notification of the sentencing courts required by subsection (3)(d) of this section;

(iii) A brief summary of any known criminal history, medical needs, behavioral problems, and other information which may be relevant to the classification of the offender; and

(iv) A standard identification card which includes the fingerprints and at least one photograph of the offender.

Disclosure of public records shall be the responsibility of the sending jurisdiction, except for those documents generated by the receiving jurisdiction.

(k) The receiving jurisdiction shall be responsible for providing regular medical care, including prescription medication, but extraordinary medical expenses shall be the responsibility of the sending jurisdiction. The costs of extraordinary medical care incurred by the receiving jurisdiction for transferred offenders shall be reimbursed by the sending jurisdiction. The receiving jurisdiction shall notify the sending jurisdiction as far in advance as practicable prior to incurring such costs. In the event emergency medical care is needed, the sending jurisdiction shall be advised as soon as practicable after the offender is treated. Offenders who are required by the medical authority of the sending jurisdiction to take prescription medication at the time of the transfer shall have at least a three-day supply of the medication

transferred to the receiving jurisdiction with the offender, and at the expense of the sending jurisdiction. Costs of prescription medication incurred after the use of the supply shall be borne by the receiving jurisdiction.

(l) Convicted offenders transferred under this agreement may be required by the receiving jurisdiction to work. Transferred offenders participating in programs of offender employment shall receive the same reimbursement, if any, as other offenders performing similar work. The receiving jurisdiction shall be responsible for the disposition or crediting of any payments received by offenders, and for crediting the proceeds from or disposal of any products resulting from the employment. Other programs normally provided to offenders by the receiving jurisdiction such as education, mental health, or substance abuse treatment shall also be available to transferred offenders, provided that usual program screening criteria are met. No special or additional programs will be provided except by mutual agreement of the sending and receiving jurisdiction, with additional expenses, if any, to be borne by the sending jurisdiction.

(m) The receiving jurisdiction shall notify offenders upon arrival of the rules of the jurisdiction and the specific rules of the facility. Offenders will be required to follow all rules of the receiving jurisdiction. Disciplinary detention, if necessary, shall be provided at the discretion of the receiving jurisdiction. The receiving jurisdiction may require the sending jurisdiction to retake any offender found guilty of a serious infraction; similarly, the receiving jurisdiction may require the sending jurisdiction to retake any offender whose behavior requires segregated or protective housing.

(n) Good-time calculations and notification of each offender's release date shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall provide the receiving jurisdiction with a formal notice of the date upon which each offender is to be released from custody. If the receiving jurisdiction finds an offender guilty of a violation of its disciplinary rules, it shall notify the sending jurisdiction of the date and nature of the violation. If the sending jurisdiction resets the release date according to its good-time policies, it shall provide the receiving jurisdiction with notice of the new release date.

(o) The sending jurisdiction shall retake the offender at the receiving jurisdiction's facility on or before his or her release date, unless the sending and receiving jurisdictions shall agree upon release in some other place. The sending jurisdiction shall bear the transportation costs of the return.

(p) Each receiving jurisdiction shall provide monthly reports to each sending jurisdiction on the number of offenders of that sending jurisdiction in its facilities pursuant to this compact.

(q) Each party jurisdiction shall notify the others of its coordinator who is responsible for administrating the jurisdiction's responsibilities under the compact. The coordinators shall arrange for alternate contact persons in the event of an extended absence of the coordinator.

(r) Upon reasonable notice, representatives of any party to this compact shall be allowed to visit any facility in which another party has agreed to house its offenders, for the purpose of inspecting the facilities and visiting its offenders that may be confined in the institution.

(4) This compact shall enter into force and become effective and binding upon the participating parties when it has been executed by two or more parties. Upon request, each party county shall provide any other compact jurisdiction with a copy of a duly enacted resolution or ordinance authorizing entry into this compact.

(5) A party participating may withdraw from the compact by formal resolution and by written notice to all other parties then participating. The withdrawal shall become effective, as it pertains to the party wishing to withdraw, thirty days after written notice to the other parties. However, such withdrawal shall not relieve the withdrawing party from its obligations assumed prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing participant shall notify the other parties to retake the offenders it has housed in its facilities and shall remove to its facilities, at its own expense, offenders it has confined under the provisions of this compact.

(6) Legal costs relating to defending actions brought by an offender challenging his or her transfer to another jurisdiction under this compact shall be borne by the sending jurisdiction. Legal costs relating to defending actions arising from events which occur while the offender is in the custody of a receiving jurisdiction shall be borne by the receiving jurisdiction.

(7) The receiving jurisdiction shall not be responsible to provide legal services to offenders placed under this agreement. Requests for legal services shall be referred to the sending jurisdiction.

(8) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution or laws of the state of Washington or is held invalid, the validity of the remainder of this compact and its applicability to any county or the department shall not be affected.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a county or the department may have with each other or with a nonparty county for the confinement, rehabilitation, or treatment of offenders.

NEW SECTION. Sec. 4. (1) The costs per offender day to the sending jurisdiction for the custody of offenders transferred according to the terms of this agreement shall be at the rate set by the state of Washington, office of financial management under RCW 70.48.440, unless the parties agree to another rate in a particular transfer. The costs may not include extraordinary medical costs, which shall be billed separately. Except in the case of

prisoner exchanges, as described in subsection (2) of this section, the sending jurisdiction shall be billed on a monthly basis by the receiving jurisdiction. Payment shall be made within thirty days of receipt of the invoice.

(2) When two parties to this agreement transfer offenders to each other, there shall be an accounting of the number of "offender days." If the number is exactly equal, no payment is necessary for the affected period. The payment by the jurisdiction with the higher net number of offender days may be reduced by the amount otherwise due for the number of offender days its offenders were held by the receiving jurisdiction. Billing and reimbursement shall remain on the monthly schedule, and shall be supported by the forms and procedures provided by applicable regulations. The accounting of offender days exchanged may be reconciled on a monthly basis, but shall be at least quarterly.

NEW SECTION. Sec. 5. The secretary is empowered to enter into contracts on behalf of this state on the terms and conditions as may be appropriate to implement the participation of the department in the Washington intrastate corrections compact under section 3(2) of this act. Nothing in this chapter is intended to create any right or entitlement in any offender transferred or housed under the authority granted in this chapter. The failure of the department or the county to comply with any provision of this chapter as to any particular offender or transfer shall not invalidate the transfer nor give rise to any right for such offender.

NEW SECTION. Sec. 6. Notwithstanding any other provisions of law, payments received by the department pursuant to contracts entered into under the authority of this chapter shall be treated as nonappropriated funds and shall be exempt from the allotment controls established under chapter 43.88 RCW. The secretary may use such funds, in addition to appropriated funds, to provide institutional and community corrections programs. The secretary may, in his or her discretion and in lieu of direct fiscal payment, offset the obligation of any sending jurisdiction against any obligation the department may have to the sending jurisdiction. Outstanding obligations of the sending jurisdiction may be carried forward across state fiscal periods by the department as a credit against future obligations of the department to the sending jurisdiction.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act shall constitute a new chapter in Title 72 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 shall take effect immediately.

Passed the House March 6, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 178

[Substitute Senate Bill No. 5441]

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

AN ACT Relating to licensing of commercial drivers; amending RCW 28A.04.131, 46.20.470, 46.37.010, 46.52.120, 46.55.090, 46.61.519, and 46.90.300; reenacting and amending RCW 46.52.130 and 46.63.020; creating a new chapter in Title 46 RCW; creating a new section; repealing RCW 46.20.440, 46.20.450, and 46.20.460; prescribing penalties; and providing effective dates.

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

NEW SECTION. Sec. 1. This chapter may be cited as the Uniform Commercial Driver's License Act.

NEW SECTION. Sec. 2. (1) The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Title XII, P.L. 99-570, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

- (a) Permitting commercial drivers to hold only one license;
- (b) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses;
- (c) Strengthening licensing and testing standards.

(2) This chapter is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter prevails. Where this chapter is silent, the general driver licensing provisions apply.

NEW SECTION. Sec. 3. The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

- (a) The number of grams of alcohol per one hundred milliliters of blood; or
- (b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a 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 section 8(4) of this act.

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross weight rating of 26,001 or more pounds;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. part 172, subpart F; or

(d) If the vehicle is a school bus as defined in RCW 46.04.521 regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of sections 12, 13, and 14 of this act, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, whichever is greater. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" has the same meaning found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person; and

(d) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(17) "State" means a state of the United States and the District of Columbia.

(18) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(19) "United States" means the fifty states and the District of Columbia.

NEW SECTION. Sec. 4. No person who drives a commercial motor vehicle may have more than one driver's license.

NEW SECTION. Sec. 5. (1)(a) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the department in the manner specified by rule of the department within thirty days of the date of conviction.

(b) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control in this or any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(c) The notification requirements contained in (a) and (b) of this subsection as they relate to the federal, provincial, territorial, or municipal laws of Canada become effective only when the federal law or federal rules are changed to require the notification or a bilateral or multilateral agreement is entered into between the state of Washington and any Canadian province implementing essentially the same standards of regulation and penalties of all parties as encompassed in this chapter.

(2) A driver whose driver's license is suspended, revoked, or cancelled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period, or who is disqualified from driving a commercial motor

vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(3) A person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(b) The dates between which the applicant drove for each employer; and

(c) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

NEW SECTION. Sec. 6. (1) An employer shall require the applicant to provide the information specified in section 5(3) of this act.

(2) No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(a) In which the driver has a driver's license suspended, revoked, or cancelled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(b) In which the driver has more than one driver's license.

NEW SECTION. Sec. 7. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter by April 1, 1992. The director shall establish a program to convert all qualified commercial motor vehicle drivers by that date. After April 1, 1992, except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, farm machinery, farm supplies, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier;

(iv) Used within one hundred fifty miles of the person's farm; and

(v) Not transporting hazardous materials required to be identified by a placard; or

(b) Who is a firefighter operating emergency equipment, and:

(i) The firefighter has successfully completed a driver training course approved by the director; and

(ii) The firefighter carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or cancelled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

NEW SECTION. Sec. 8. (1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than fifty dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(2) The department may waive the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(3) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or cancelled in any state, nor may a

commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(4)(a) A commercial driver's instruction permit may be issued to an individual who holds a valid automobile or classified driver's license.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. An application for a commercial driver's instruction permit shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for commercial driver's instruction permits to the state treasurer.

NEW SECTION. Sec. 9. (1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

- (a) The full name and current mailing and residential address of the person;
- (b) A physical description of the person, including sex, height, weight, and eye color;
- (c) Date of birth;
- (d) The applicant's Social Security number;
- (e) The person's signature;
- (f) Certifications including those required by 49 C.F.R. part 383.71(a);
- (g) Proof of certification of physical examination or waiver, as required by 49 C.F.R. 391.41 through 391.49;
- (h) Any other information required by the department; and
- (i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) A driver of a commercial motor vehicle shall immediately apply for a driver's license upon becoming a resident of this state. No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

NEW SECTION. Sec. 10. (1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;

- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;
- (e) The person's Social Security number or any number or identifier deemed appropriate by the department;
- (f) The person's signature;
- (g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;
- (h) The name of the state; and
- (i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver;

(B) Vehicles used in the transportation of hazardous materials that requires the vehicle to be identified with a placard under 49 C.F.R., part 172, subpart F; and

(C) School buses designed to carry fewer than sixteen passengers.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P" authorizes driving vehicles carrying passengers.

(v) "N" authorizes driving tank vehicles.

(vi) "X" represents a combination of hazardous materials and tank vehicle endorsements.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) Before issuing a commercial driver's license, the department shall obtain driving record information through the commercial driver's license information system, the national driver register, and from the current state of record.

(4) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of that fact, and provide all information required to ensure identification of the person.

(5) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by section 9(1) of this act, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall take and pass the written test for a hazardous materials endorsement.

NEW SECTION. Sec. 11. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to section 14 of this act, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a commercial motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle.

If any of the violations set forth in this subsection occurred while transporting a hazardous material required to be identified by a placard, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after the effective date of this act, may be considered in applying this subsection.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(6) Within ten days after suspending, revoking, or cancelling a commercial driver's license, the department shall update its records to reflect that action. After suspending, revoking, or cancelling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state that issued the commercial driver's license.

NEW SECTION. Sec. 12. When a person has been disqualified from operating a commercial motor vehicle, the person is not entitled to have the commercial driver's license restored until after the expiration of the appropriate disqualification period required under section 11 of this act. After expiration of the appropriate period and upon payment of a requalification fee of twenty dollars, the person may apply for a new, duplicate, or renewal commercial driver's license as provided by law. If the person has been disqualified for a period of one year or more, the person shall demonstrate that he or she meets the commercial driver's license qualification standards specified in section 8 of this act.

NEW SECTION. Sec. 13. (1) Notwithstanding any other provision of Title 46 RCW, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol in his or her system.

(2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol in his or her system or who refuses to take a test to determine his or her alcohol content as provided by section 14 of this act.

NEW SECTION. Sec. 14. (1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under section 11 of this act.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under section 11 of this act, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while under the influence of alcohol or any drug, whether the person was placed under arrest, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcoholic concentration in that person's blood of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

NEW SECTION. Sec. 15. Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor

vehicle, the department shall notify the driver licensing authority in the licensing state of the conviction.

NEW SECTION. Sec. 16. The department may adopt rules necessary to carry out this chapter.

NEW SECTION. Sec. 17. The department may enter into or make agreements, arrangements, or declarations to carry out this chapter.

NEW SECTION. Sec. 18. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial driver's instruction permit issued by any state in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not suspended, revoked, or cancelled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order.

NEW SECTION. Sec. 19. (1) A person subject to RCW 81.04.405 who is determined by the utilities and transportation commission, after notice, to have committed an act that is in violation of section 4, 5, 6, 7, or 13 of this act is liable to Washington state for the civil penalties provided for in RCW 81.04.405.

(2) A person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of section 4, 5, 6, 7, or 13 of this act is guilty of a gross misdemeanor.

Sec. 20. Section 4, chapter 153, Laws of 1969 ex. sess. as last amended by section 1, chapter 200, Laws of 1981 and RCW 28A.04.131 are each amended to read as follows:

In addition to other powers and duties, the state board of education shall adopt rules and regulations governing the training and qualifications of school bus drivers. Such rules and regulations shall be designed to insure that persons will not be employed to operate school buses unless they possess such physical health and driving skills as are necessary to safely operate school buses: PROVIDED, That such rules and regulations shall insure that school bus drivers are provided a due process hearing before any certification required by such rules and regulations is cancelled: PROVIDED FURTHER, That such rules and regulations shall not conflict with the authority of the department of licensing to license school bus drivers in accordance with ~~((RCW 46.20.440 through 46.20.470))~~ chapter 46.— RCW (sections 1 through 19 of this act). The state board of education may obtain a copy of the driving record, as maintained by the department of licensing, for consideration when evaluating a school bus driver's driving skills.

Sec. 21. Section 4, chapter 20, Laws of 1967 ex. sess. as last amended by section 7, chapter 1, Laws of 1985 ex. sess. and RCW 46.20.470 are each amended to read as follows:

There shall be an additional fee for ~~((the special endorsement for each class of vehicle))~~ issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each ~~((endorsement))~~ class shall not exceed ~~((ten))~~ twelve dollars for the original ~~((endorsement nor more than three dollars for))~~ commercial driver's license or subsequent ~~((endorsement))~~ renewals. The fee shall be deposited in the highway safety fund.

Sec. 22. Section 46.37.010, chapter 12, Laws of 1961 as last amended by section 707, chapter 330, Laws of 1987 and RCW 46.37.010 are each amended to read as follows:

(1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(8) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested

or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(9) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

Sec. 23. Section 46.52.120, chapter 12, Laws of 1961 as last amended by section 2, chapter 38, Laws of 1988 and RCW 46.52.120 are each amended to read as follows:

(1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) ~~The ((case record shall be maintained in two parts:~~

~~(a) One part shall be the employment driving record of the person. This part shall include all motor vehicle accidents in which the person is involved while the person is driving a commercial motor vehicle as an employee of another or an owner-operator, all convictions of the person for violation of the motor vehicle laws while the person is driving a commercial motor vehicle as an employee of another or an owner-operator, and all findings that the person has committed a traffic infraction while the person is driving a commercial motor vehicle as an employee of another or an owner-operator. The same reports shall be entered when the person is a law enforcement officer or fire fighter as defined in RCW 41.26.030, or a state patrol officer, and is driving an official police, state patrol, or fire department vehicle in the course of their official duties.~~

~~(b) The other part shall include all other accidents, convictions, and findings that the person has committed a traffic infraction:~~

~~(3) Such)) records shall be for the confidential use of the director ((and)), the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be offered as evidence in any court except in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license or to provide proof of a person's failures to appear under RCW 46.64.020.~~

~~((4))~~ (3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law.

Sec. 24. Section 27, chapter 21, Laws of 1961 ex. sess. as last amended by section 1, chapter 181, Laws of 1987, section 2, chapter 397, Laws of 1987 and by section 2, chapter 9, Laws of 1987 1st ex. sess. and RCW 46-.52.130 are each reenacted and amended to read as follows:

~~((Any request for))~~ A certified abstract ~~((must specify which part is requested, and only the part requested shall be furnished. The employment))~~ of the driving record ~~((part))~~ shall be furnished only to the individual named in the abstract, an employer, the insurance carrier that has insurance in effect covering the employer~~((;))~~ or a prospective employer~~((; The other part shall be furnished only to the individual named in the abstract))~~, the insurance carrier that has insurance in effect covering the named individual, ~~((or))~~ the insurance carrier to which the named individual has applied~~((; Both parts shall be furnished to))~~, or an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment. City attorneys and county prosecuting attorneys may provide ~~((both parts of))~~ the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to ~~((individuals;))~~ insurance companies, ~~((or employers;))~~ and covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies. A certified abstract of the full driving record maintained by the department shall be furnished to individuals and employers or prospective employers. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; ~~((and))~~ any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

~~((The abstract provided to an insurance company shall have excluded from it any information pertaining to any occupational driver's license when the license is issued to any person employed by another or self-employed as a motor vehicle driver who during the five years preceding the request has been issued such a license by reason of a conviction or finding of a traffic infraction involving a motor vehicle offense outside the scope of his principal employment, and who has during that period been principally employed as a motor vehicle driver deriving the major portion of his income therefrom:))~~ The abstract provided to the insurance company shall ~~((also))~~ exclude any information pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any member of the Washington state patrol, while driving official vehicles in the performance of occupational duty during an emergency situation if the chief of the officer's or fire fighter's department certifies on the accident report that the actions of the officer or fire fighter were reasonable under the circumstances as they existed at the time of the accident.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer receiving the certified abstract shall use it exclusively for his own purpose to determine whether the license should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Any violation of this section is a gross misdemeanor.

Sec. 25. Section 9, chapter 377, Laws of 1985 as amended by section 7, chapter 311, Laws of 1987 and RCW 46.55.090 are each amended to read as follows:

(1) All vehicles impounded shall be taken to the nearest storage location that has been inspected and is listed on the application filed with the department.

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. Personal belongings shall not be sold at auction to fulfill a lien against the vehicle.

(4) All personal belongings not claimed before the auction shall be turned over to the local law enforcement agency to which the initial notification of impoundment was given. Such personal belongings shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

(5) Tow truck drivers shall have a Washington state driver's license endorsed for (~~vehicle combinations under RCW 46.20.440~~) the appropriate classification under chapter 46.— RCW (sections 1 through 19 of this act) or the equivalent issued by another state.

(6) Any person who shows proof of ownership or written authorization from the impounded vehicle's registered or legal owner or the vehicle's insurer may view the vehicle without charge during normal business hours.

Sec. 26. Section 28, chapter 165, Laws of 1983 as amended by section 1, chapter 274, Laws of 1984 and RCW 46.61.519 are each amended to read as follows:

(1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor

home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license (~~((with a special endorsement issued under RCW 46.20.440))~~ endorsed for the appropriate classification under chapter 46.— RCW (sections 1 through 19 of this act) in the course of his usual employment transporting passengers at the employer's direction: PROVIDED, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway.

Sec. 27. Section 3, chapter 186, Laws of 1986 as amended by section 2, chapter 181, Laws of 1987, section 55, chapter 244, Laws of 1987, section 6, chapter 247, Laws of 1987, and by section 11, chapter 388, Laws of 1987 and RCW 46.63.020 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) (~~RCW 46.16.160 relating to vehicle trip permits;~~

~~(8))~~ RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(8) relating to unauthorized acquisition of a special decal, license plate, or card for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

- (12) RCW 46.20.342 relating to driving with a suspended or revoked license;
- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.416 relating to driving while in a suspended or revoked status;
- (15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (16) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (17) Section 19 of this act relating to commercial driver's licenses;
- (18) Chapter 46.29 RCW relating to financial responsibility;
- ~~((18))~~ (19) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- ~~((19))~~ (20) RCW 46.48.175 relating to the transportation of dangerous articles;
- ~~((20))~~ (21) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- ~~((21))~~ (22) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- ~~((22))~~ (23) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- ~~((23))~~ (24) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- ~~((24))~~ (25) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- ~~((25))~~ (26) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- ~~((26))~~ (27) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- ~~((27))~~ (28) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- ~~((28))~~ (29) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- ~~((29))~~ (30) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- ~~((30))~~ (31) RCW 46.61.500 relating to reckless driving;
- ~~((31))~~ (32) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- ~~((32))~~ (33) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- ~~((33))~~ (34) RCW 46.61.522 relating to vehicular assault;
- ~~((34))~~ (35) RCW 46.61.525 relating to negligent driving;

~~((35))~~ (36) RCW 46.61.530 relating to racing of vehicles on highways;

~~((36))~~ (37) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

~~((37))~~ (38) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((38))~~ (39) RCW 46.64.020 relating to nonappearance after a written promise;

~~((39))~~ (40) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((40))~~ (41) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((41))~~ (42) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((42))~~ (43) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((43))~~ (44) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((44))~~ (45) Chapter 46.82 RCW relating to driver's training schools;

~~((45))~~ (46) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

~~((46))~~ (47) RCW 46.87.250 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 28. Section 1, chapter 19, Laws of 1985 as last amended by section 1, chapter 24, Laws of 1988 and RCW 46.90.300 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.416, 46.20.420, 46.20.430, 46.20.435, ~~((46.20.440))~~ 46.20.500, 46.20.510, 46.20.550, 46.20.599, 46.20.750, 46.29.605, 46.29.625, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240,

46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.65.090, 46.79.120, and 46.80.010.

NEW SECTION. Sec. 29. The state supreme court shall revise the uniform citation form by October 1, 1989, to conform to the requirements of this act.

NEW SECTION. Sec. 30. 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. 31. Sections 1 through 19 of this act shall constitute a new chapter in Title 46 RCW.

NEW SECTION. Sec. 32. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 20, Laws of 1967 ex. sess., section 1, chapter 68, Laws of 1969 ex. sess., section 4, chapter 100, Laws of 1970 ex. sess., section 1, chapter 126, Laws of 1971 ex. sess., section 1, chapter 114, Laws of 1980 and RCW 46.20.440;

(2) Section 2, chapter 20, Laws of 1967 ex. sess. and RCW 46.20.450; and

(3) Section 3, chapter 20, Laws of 1967 ex. sess., section 2, chapter 68, Laws of 1969 ex. sess., section 2, chapter 126, Laws of 1971 ex. sess. and RCW 46.20.460.

NEW SECTION. Sec. 33. Sections 25, 26, 28, and 32 of this act shall take effect on April 1, 1992. The remainder of this act shall take effect on October 1, 1989. The director of licensing may immediately take such steps as are necessary to insure that all sections of this act are implemented on their respective effective dates.

Passed the Senate April 10, 1989.

Passed the House April 4, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 179

[Senate Bill No. 5689]

WORKERS' COMPENSATION—INSURANCE PREMIUMS—INVESTMENT

AN ACT Relating to industrial insurance premiums investment policy; and amending RCW 43.33A.110 and 43.33A.150.

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

Sec. 1. Section 11, chapter 3, Laws of 1981 as last amended by section 1, chapter 130, Laws of 1988 and RCW 43.33A.110 are each amended to read as follows:

The state investment board may make appropriate rules and regulations for the performance of its duties. The board shall establish investment policies and procedures designed exclusively to maximize return at a prudent level of risk. However, ~~((until July 1, 1989;))~~ in the case of the department of labor and industries' accident, medical aid, and reserve funds, the board shall establish investment policies and procedures designed to attempt to limit fluctuations in industrial insurance premiums and, subject to this purpose, to maximize return at a prudent level of risk. The board shall adopt rules to ensure that its members perform their functions in compliance with chapter 42.18 RCW. Rules adopted by the board shall be adopted pursuant to chapter ~~((34.04))~~ 34.05 RCW.

Sec. 2. Section 15, chapter 3, Laws of 1981 and RCW 43.33A.150 are each amended to read as follows:

(1) The state investment board shall prepare written reports at least quarterly summarizing the investment activities of the state investment board, which reports shall be sent to the governor, the senate ways and means committee, the house appropriations committee, the department of retirement systems, and other agencies having a direct financial interest in the investment of funds by the board, and to other persons on written request. The state investment board shall provide information to the department of retirement systems necessary for the preparation of monthly reports.

(2) At least annually, the board shall report on the board's investment activities for the department of labor and industries' accident, medical aid, and reserve funds to the senate financial institutions and insurance committee, the senate economic development and labor committee, and the house commerce and labor committee, or appropriate successor committees.

Passed the Senate March 7, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 180

[Senate Bill No. 5701]

FINANCIAL INSTITUTIONS—SUPERVISION, REGULATION, AND LIABILITY OF DIRECTORS

AN ACT Relating to financial institutions; amending RCW 30.04.060, 30.04.075, 30.04.410, 32.04.220, and 32.32.228; adding a new section to chapter 30.12 RCW; adding a new section to chapter 32.04 RCW; adding a new section to chapter 32.16 RCW; adding a new section to chapter 32.20 RCW; and declaring an emergency.

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

Sec. 1. Section 30.04.060, chapter 33, Laws of 1955 as last amended by section 3, chapter 305, Laws of 1985 and RCW 30.04.060 are each amended to read as follows:

(1) The supervisor, the deputy supervisor, or a bank examiner(~~(, with-
out previous notice;)~~) shall visit each bank and each trust company at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The supervisor may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The supervisor may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic bank holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic bank holding companies, or of out-of-state

bank holding companies owning a bank or trust company the principal operations of which are conducted in this state. The supervisor may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The supervisor may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state.

Sec. 2. Section 1, chapter 245, Laws of 1977 ex. sess. as amended by section 2, chapter 279, Laws of 1986 and RCW 30.04.075 are each amended to read as follows:

(1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the supervisor and the supervisor's staff from other state or federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the supervisor and the supervisor's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the supervisor shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

~~((c))~~ (d) The examined bank, trust company, or alien bank, or holding company thereof;

~~((d))~~ (e) The attorney general in his or her role as legal advisor to the supervisor;

~~((e))~~ (f) Liquidating agents of a distressed bank, trust company, or alien bank;

~~((f))~~ (g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

~~((g))~~ (h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the supervisor and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition

the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 3. Section 3, chapter 246, Laws of 1977 ex. sess. and RCW 30.04.410 are each amended to read as follows:

(1) The supervisor may ((file an action in the superior court of the county in which the bank is located to restrain the pending acquisition or control of a bank if he finds after considering the application and within thirty days after its filing any of the following)) disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

((1)) (a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

((2)) (b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

((3)) (c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

((4)) (d) The information provided by the application is insufficient for the supervisor to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

((5)) (e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the supervisor issues written notice of intent not to disapprove the action.

(3) The supervisor shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the supervisor any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors.

NEW SECTION. Sec. 4. A new section is added to chapter 32.04 RCW to read as follows:

(1) The supervisor, the deputy supervisor, or a bank examiner shall visit each savings bank at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The supervisor may make such other full or partial examinations as deemed necessary and may examine any holding company that owns any portion of a savings bank chartered by the state of Washington and obtain reports of condition for any holding company that owns any portion of a savings bank chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the savings bank or holding company has an investment or any publicly held corporation the capital stock of which is controlled by the savings bank or holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The supervisor may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic savings banks or holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic savings banks and holding companies, or of out-of-state holding companies owning a savings bank the principal operations of which are conducted in this state. The supervisor may accept reports of examination and other records from such authorities

in lieu of conducting his or her own examinations. The supervisor may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state.

Sec. 5. Section 2, chapter 245, Laws of 1977 ex. sess. and RCW 32-.04.220 are each amended to read as follows:

(1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of mutual savings banks, and information obtained by the supervisor and the supervisor's staff from other state or federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to section 4 of this act, and information obtained by the supervisor and the supervisor's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Federal agencies empowered to examine mutual savings banks (to the examined mutual savings bank as provided in subsection (4) of this section, and to);

(b) Bank regulatory authorities with whom the supervisor has entered into agreements pursuant to section 4 of this 1988 act, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the supervisor shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the supervisor;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the mutual savings bank, and the supervisor may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the supervisor and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to section 4 of this act, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new

mutual savings bank or an application for a branch of a mutual savings bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor.

Sec. 6. Section 25, chapter 56, Laws of 1985 and RCW 32.32.228 are each amended to read as follows:

(1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(c) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2) (a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the supervisor a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the supervisor may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting

in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the supervisor, in the exercise of the supervisor's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual savings bank or the holding company of a mutual savings bank need only notify the supervisor and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the supervisor may require that the information required by (a) (i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(c) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the supervisor may require that information required by (a) (i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the supervisor in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the supervisor.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who wilfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to

chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The supervisor may ~~((file an action in the superior court of the county in which the bank is located to restrain the pending acquisition of control of a savings bank if he finds after considering the application and within thirty days after its filing any of the following))~~ disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the supervisor to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the supervisor issues written notice of intent not to disapprove the action.

The supervisor shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the supervisor any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4) (a) For a period of ten years following the acquisition of control by any person, neither such a controlling party nor any associate shall receive any

loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the supervisor may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the supervisor, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect.

NEW SECTION. Sec. 7. A new section is added to chapter 30.12 RCW to read as follows:

If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the supervisor of banking, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation.

NEW SECTION. Sec. 8. A new section is added to chapter 32.20 RCW to read as follows:

A savings bank may invest its funds in the stock and other securities and obligations of a savings institution if the deposits of the savings institution are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, or any other federal instrumentalities established to carry on substantially the same functions as such corporations: PROVIDED, That the savings bank shall own not less than fifty-one percent of the outstanding stock having voting power.

NEW SECTION. Sec. 9. A new section is added to chapter 32.16 RCW to read as follows:

If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the supervisor of banking, and if the directors are aware that such facts and circumstances

constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 6, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 181

[Substitute Senate Bill No. 5506]

PUBLIC WORKS BOARD—RECOMMENDED PROJECTS—APPROPRIATIONS

AN ACT Relating to appropriations for projects recommended by the public works board; amending section 116, chapter 6, Laws of 1987 1st ex. sess. (uncodified); making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. Pursuant to chapter 43.155 RCW, there is appropriated to the public works board from the public works assistance account for the biennium ending June 30, 1989, the following sums to make loans for the specified public works projects:

- (1) Town of Albion—capital improvement plan—development of a plan for bridges, roads, domestic water, sanitary and storm sewer needs \$6,000
- (2) Town of Albion—road project—reconstruct 0.24 miles of an arterial street \$37,120
- (3) Public Utility District No. 1 of Asotin County—capital improvement plan—development of a plan for the district's water system .. \$15,000
- (4) City of Bellevue—storm sewer project—replace existing 48-inch corrugated metal culvert under Farmers Road \$273,000
- (5) City of Bellingham—water project—replace 3.8 miles of water main along Chuckanut Drive \$1,000,000
- (6) Public Utility District No. 1 of Chelan County—water project—reconstruction of 19,600 linear feet of domestic water transmission and distribution mains \$350,000
- (7) Clark County—sanitary sewer project—expansion of the Salmon Creek Wastewater Treatment Plant \$1,500,000
- (8) City of Cosmopolis—sanitary sewer project—replacement of two blocks of sanitary sewer \$66,500

- (9) City of Duvall—capital improvement plan—development of a plan for the city's road and storm sewer systems \$15,000
- (10) City of Duvall—storm sewer project—main street storm drain replacement \$72,126
- (11) City of Edmonds—road project—repair and resurface 6.3 miles of arterial streets, 14.9 miles of residential collector streets, and 5.3 miles of residential streets \$1,500,000
- (12) City of Ellensburg—road project—Pearl Street, 5th and 6th Avenues, sidewalk, street, and creek repair \$138,168
- (13) City of Everett—water project—replace 12,485 linear feet of wood-stave pipeline \$1,500,000
- (14) Federal Way Water and Sewer District—water project—upgrade and replace the water system \$973,685
- (15) City of Goldendale—water project—replace approximately 31 percent of the system's distribution lines, service connectors, and isolation valves..... \$1,000,000
- (16) City of Grandview—water project—provide a new well for the city, including an aerator, pump and well house, and a standby generator..... \$660,258
- (17) City of Hoquiam—road project—repair damaged and substandard sidewalks to include removal of existing sidewalk, ballasting, and construction of new sidewalks and wheelchair ramps \$845,000
- (18) City of Kennewick—road project—reconstruction and widening of 10,700 linear feet of old two-lane county road \$1,485,000
- (19) King County Water District No. 75—water project—new pump station to correct problems of leaking mains, surging, and lack of adequate fire protection \$570,000
- (20) Public Utility District No. 1 Klickitat County—sanitary sewer project—new sludge disposal areas, plant improvements, manhole repair and replacement, and new lagoon liners \$464,259
- (21) Town of LaConner—road project—improve 17,500 square feet of Washington Street \$39,600
- (22) Liberty Lake Sewer District—water project—replace the failing water system..... \$589,385
- (23) City of Lynnwood—sanitary sewer project—modify the Number 10 and Number 12 Sanitary Sewage Transmission Systems \$1,500,000
- (24) City of Marysville—road project—replace 1,300 feet of Grover Street to include reconstruction of the pavement to 44-foot wide with curb, sidewalks, and storm drainage \$167,400
- (25) City of Moses Lake—road project—road improvements—installation of new sidewalks, bicycle paths, gutters, and a bridge overpass \$536,985
- (26) Northeast Lake Washington Sewer and Water District—water project—replace 10.7 miles of leaking water mains \$1,500,000

- (27) Town of Oakesdale—capital improvement plan—development of a plan for the city's bridge, road, domestic water, sanitary sewer and storm sewer systems..... \$6,000
- (28) City of Ocean Shores—capital improvement plan—development of a plan for the city's storm sewer system \$15,000
- (29) City of Omak—storm sewer project—construction of three major pump stations and replacement of nonfunctioning drywells..... \$199,350
- (30) City of Othello—road project—rehabilitate a primary trucking route \$573,240
- (31) City of Pacific—capital improvement plan—development of a plan for the city's sanitary sewer system \$15,000
- (32) City of Palouse—capital improvement plan—development of a plan for the city's bridge, road, domestic water, sanitary sewer, and storm sewer systems..... \$7,500
- (33) City of Pasco—water project—construction of a one million gallon steel elevated storage tank \$1,245,000
- (34) City of Pomeroy—capital improvement plan—development of a plan for the city's bridge, road, domestic water, sanitary sewer, and storm sewer systems..... \$8,000
- (35) City of Pomeroy—road project—resurface and widen existing streets \$60,501
- (36) City of Pullman—sanitary sewer project—replace 2,700 linear feet of existing clay sewer line \$490,000
- (37) City of Redmond—water project—connect Redmond's water system well service area to the city of Seattle Tolt Eastside supply line No. 2 \$1,000,000
- (38) City of Ridgefield—road project—five minor arterials will be improved to upgrade the road surface, width, and drainage \$50,000
- (39) Rose Hill Water and Sewer District—water project—replacement of 25,900 feet of steel mains \$996,000
- (40) Sammamish Plateau Water and Sewer District—sanitary sewer project—allow collection of sewage from failing septic tank systems in the Lake Sammamish area \$1,469,700
- (41) City of Seattle—road project—rehabilitation of Northeast Northgate Way \$1,500,000
- (42) City of Shelton—sanitary sewer project—replace 5,000 linear feet of 12-inch sanitary sewer main and 2,000 linear feet of 30-inch main \$1,170,000
- (43) Skyway Water and Sewer District—sanitary sewer project—new sewer lines, pump station, and 3,500 linear feet of force main .. \$1,500,000
- (44) Snohomish County—road project—construct a 5-lane urban section along two county roads..... \$1,000,000
- (45) City of Spokane—bridge project—continue with the replacement and demolition of the T. J. Meenach Drive Bridge \$783,900

(46) City of Spokane—sanitary sewer project—design and construct a cogeneration plant	\$714,876
(47) Town of Steilacoom—road project—reconstruct Main Street.....	\$535,500
(48) Thurston County—sanitary sewer project—Boston Harbor wastewater system improvements	\$798,407
(49) Thurston County—water project—upgrade the Tamoshan water system	\$173,166
(50) City of Union Gap—water project—construct new one million gallon concrete reservoir	\$888,930
(51) City of Vancouver—road project—reconstruction of 5.82 miles of major arterial streets	\$1,000,000
(52) City of Wapato—water project—construct a new well and reservoir	\$900,000
(53) City of Woodland—water project—construct a new 650,000 gallon reservoir	\$327,600
(54) Town of Woodway—capital improvement plan—development of a plan for the city's sanitary sewer system	\$14,115
(55) City of Yakima—road project—resignalization of six intersections and improved lighting on five arterials	\$765,000
(56) City of Yakima—storm sewer project—replace an open, unlined canal channel with a piping system.....	\$174,879
(57) City of Yakima—water project—replace the Ranney Collector with a new well, turbine pump, pumphouse, a complete electrical, and connecting pipe	\$495,000
(58) Yakima County—bridge project—reconstruct nine bridges and one culvert	\$320,000
(59) Town of Yelm—capital improvement plan—development of a plan for the city's bridge, road, and domestic water systems.....	\$15,000
(60) Town of Yelm—road project—reconstruction of 1,750 linear feet of roadway to realign a section of First Street.....	\$180,800
(61) King County Water District No. 83—water project—replace deteriorating steel mains.....	\$444,690
(62) City of Longview—road project—reconstruct .52 miles of street paving, storm sewers, and driveways of Industrial Way East	\$300,000
(63) City of Mercer Island—sanitary sewer project—refurbish 20 sanitary sewer lift stations on the shore of Lake Washington	\$624,890
(64) City of Sunnyside—sanitary sewer project—physical improvements to wastewater treatment, collection, and conveyance systems.....	\$1,365,000
(65) Emergency public works pursuant to RCW 43.155.065	\$1,000,000
Total Appropriation	\$39,931,540

Sec. 2. Section 116, chapter 6, Laws of 1987 1st ex. sess. (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY DEVELOPMENT

Public Works Trust Fund

The appropriations in this section are provided solely for public works projects recommended by the public works board and approved by the legislature under chapter 43.155 RCW.

	Reappropriation	Appropriation
Public Works Trust Fund Acct	25,056,743	((34,972,000)) <u>29,086,385</u>
Project	Estimated	Estimated
Costs	Costs	Total
Through	7/1/89 and	Costs
6/30/87	Thereafter	
35,910,257		

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

Passed the Senate March 13, 1989.

Passed the House April 19, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 182

[House Bill No. 1976]

PROJECT COST EVALUATION METHODOLOGY PILOT PROGRAM

AN ACT Relating to the project cost evaluation pilot program; amending RCW 47.28.190 and 47.28.200; and amending section 5, chapter 424, Laws of 1987 (uncodified).

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

Sec. 1. Section 2, chapter 424, Laws of 1987 and RCW 47.28.190 are each amended to read as follows:

The legislature finds that if the legislative transportation committee decides to implement the pilot program it is necessary to temporarily suspend the application of certain statutes regulating bid and day labor limits for roadway construction and maintenance projects for the purposes of this pilot program. The following statutes are suspended as to the participating cities and counties chosen under RCW 47.28.180 for the period July 1, 1987, through June 30, ((+1990)) 1991, and only insofar as the statutes relate to bid and day labor limits for roadway construction and maintenance

projects: RCW 35.22.620, 35.23.352, 35A.40.210, 36.77.020, 36.77.065, 36.33A.010, and 39.12.020.

Sec. 2. Section 3, chapter 424, Laws of 1987 and RCW 47.28.200 are each amended to read as follows:

The department of transportation and each of the participating cities and counties shall report to the legislature on the outcome of this pilot program on or before February 15, ~~((+1990))~~ 1991, and shall provide to the legislative transportation committee such reports and other items as the committee may desire.

Sec. 3. Section 5, chapter 424, Laws of 1987 (uncodified) is amended to read as follows:

~~((Sections 1 through 4 of this act))~~ RCW 47.28.180 through 47.28.210 shall expire on June 30, ~~((+1990))~~ 1991, unless extended by law.

Passed the House March 9, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 183

[Substitute Senate Bill No. 5903]

MEDICALLY FRAGILE CHILDREN—NURSING HOME PLACEMENT PLAN

AN ACT Relating to nursing home care for medically fragile children; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that inpatient skilled nursing care for children with severe physical and mental disabilities should be a part of the state's long-term care continuum. Such medically fragile children need to be placed in long-term care facilities when in-home and residential facilities are not appropriate for their medical condition. Currently, such placements are often not available and the children have to be placed in out-of-state facilities.

NEW SECTION. Sec. 2. The department of social and health services, in consultation with the department of health if created by the legislature, shall develop a plan for providing inpatient skilled nursing care to medically fragile children. The plan shall include: (1) Criteria and evaluation tools for identifying medically fragile children in need of inpatient skilled nursing placement; (2) identification of in-state facilities that can provide such care; (3) proposed standards for facilities providing such care; (4) a plan for providing such care; (5) a schedule for implementation of the plan; (6) identification of federal funds available to assist in providing such care; and (7) recommendations on legislative action needed to implement the plan. The department shall submit a report to the senate health care and corrections

committee and the house of representatives health care committee by December 1, 1989.

- Passed the Senate March 13, 1989.
- Passed the House April 13, 1989.
- Approved by the Governor April 27, 1989.
- Filed in Office of Secretary of State April 27, 1989.

CHAPTER 184

[House Bill No. 2013]

PARK AND RECREATION DISTRICTS—FINANCING PROPOSALS—SUBMISSION TO VOTERS

AN ACT Relating to park and recreation districts; and adding a new section to chapter 36.69 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.69 RCW to read as follows:

If the petition or resolution initiating the formation of the proposed park and recreation district proposes that the initial capital or operational costs are to be financed by regular property tax levies for a five-year period as authorized by RCW 36.69.145, or an annual excess levy, or that proposed capital costs are to be financed by the issuance of general obligation bonds and bond retirement levies, a proposition or propositions for such purpose or purposes shall be submitted to the voters of the proposed park and recreation district at the same election. A proposition or propositions for regular property tax levies for a five-year period as authorized by RCW 36.69.145, an annual excess levy, or the issuance of general obligation bonds and bond retirement levies, may also be submitted to the voters at any general or special election. The ballot proposition or propositions authorizing the imposition of a tax levy or levies, or issuance of general obligation bonds and imposition of tax levies, shall be null and void if the park and recreation district was not authorized to be formed.

- Passed the House March 15, 1989.
- Passed the Senate April 6, 1989.
- Approved by the Governor April 27, 1989.
- Filed in Office of Secretary of State April 27, 1989.

CHAPTER 185

[House Bill No. 1524]

CORRECTIONAL INDUSTRIES—PROGRAM ADMINISTRATION

AN ACT Relating to Washington state correctional industries; and amending RCW 41-.06.071, 43.19.1932, 72.09.060, 72.09.070, 72.09.080, 72.09.090, 72.09.100, 72.09.106, 72.09-.110, 72.60.100, 72.60.102, 72.62.020, and 72.63.040.

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

Sec. 1. Section 28, chapter 136, Laws of 1981 as amended by section 1, chapter 175, Laws of 1983 and RCW 41.06.071 are each amended to read as follows:

In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter shall not apply in the department of corrections to the secretary, the secretary's personal secretary, the deputy secretary, all division directors and assistant directors, all facility superintendents and associate superintendents for facilities with a resident capacity of fifty or more and all management and sales staff of ~~((institutional))~~ correctional industries.

Sec. 2. Section 14, chapter 136, Laws of 1981 and RCW 43.19.1932 are each amended to read as follows:

The department of corrections shall be exempt from the following provisions of this chapter in respect to goods or services purchased or sold pursuant to the operation of ~~((institutional))~~ correctional industries: RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, 43.19.1917, 43.19.1919, 43.19.1921, 43.19.1925, and 43.19.200.

Sec. 3. Section 6, chapter 136, Laws of 1981 and RCW 72.09.060 are each amended to read as follows:

The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) ~~((institutional))~~ correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community service, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies.

Sec. 4. Section 8, chapter 136, Laws of 1981 and RCW 72.09.070 are each amended to read as follows:

(1) There is created ~~((an institutional))~~ a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) ~~((The board shall advise the department of corrections in adopting and implementing))~~ Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates employment, work experience, and training in vocations which may provide opportunities for legitimate means of livelihood upon their release from custody((-);

(b) Provide industries which will reduce the tax burden of corrections through production of goods and services for sale and use((-);

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and design correctional industries work programs;

(f) Invest available funds in correctional industries enterprises and work programs.

(3) ((In addition,)) The board of directors shall((:

(a) Recommend to the director candidates for appointment as director of the institutional industries division:

(b) At least annually evaluate the work performance of the director of the institutional industries division and submit this evaluation to the secretary:

(c) Advise the director of the institutional industries division in the selection of, contracting for, and supervision of work programs with participating private enterprise firms:

(d) Advise the director of the institutional industries division in the development and design of institutional industries work programs:

(e) Advise the secretary and the director of the institutional industries division in the investment of funds in institutional industry enterprises and work programs:

(f) Review and evaluate the productivity and appropriateness of all correctional work programs and report on their effectiveness to the director of the division and to the secretary:

(g) Review and evaluate on an on-going basis all financial reports for work programs:

(h) Prepare and transmit to the governor and legislature through the secretary the report required under RCW 72.60.280)) at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors.

Sec. 5. Section 9, chapter 136, Laws of 1981 and RCW 72.09.080 are each amended to read as follows:

(1) The ~~((institutional))~~ correctional industries board of directors shall consist of nine voting members ~~((Seven members shall be))~~, appointed by the governor upon recommendation by the secretary ~~((and))~~. Each member shall serve a three-year staggered term~~((s))~~. Initially, the ~~((secretary))~~ governor shall appoint ~~((two))~~ three members to one-year terms, ~~((two))~~ three members to two-year terms, and three members to three-year terms. ~~((In addition, the secretary and the director of the institutional industries division shall be ex officio members.))~~ The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The ~~((seven))~~ nine members appointed by the ~~((secretary))~~ governor shall include representatives from both labor and industry.

(2) The board of directors shall elect a ~~((chairman))~~ chair and such other officers as it deems appropriate ~~((However, the chairman may not be the secretary or the director of the institutional industries division))~~ from among the voting members.

(3) The voting members of the board of directors shall serve ~~((with-out))~~ with compensation ~~((but))~~ pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties.

Sec. 6. Section 10, chapter 136, Laws of 1981 as amended by section 203, chapter 7, Laws of 1987 and RCW 72.09.090 are each amended to read as follows:

The ~~((institutional))~~ correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the ~~((institutional))~~ correctional industries operations.

The division's net profits from ~~((institutional))~~ correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of ~~((institutional))~~ correctional industries. However,

the board of directors shall annually recommend that some portion of the profits from ((institutional)) correctional industries be returned to the state general fund.

The board and secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive ((institutional)) correctional industries program.

Sec. 7. Section 11, chapter 136, Laws of 1981 as last amended by section 2, chapter 193, Laws of 1986 and RCW 72.09.100 are each amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES. The industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director of the ((institutional)) correctional industries division. If the director finds that he cannot reasonably determine the wage, then the pay shall not be less than the federal minimum wage.

(2) CLASS II: TAX REDUCTION INDUSTRIES. Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations. The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies and to nonprofit organizations: PROVIDED, That to avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal

husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

Security and custody services shall be provided without charge by the department of corrections.

Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the federal minimum wage and which is approved by the director of ((institutional)) correctional industries.

(3) **CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(a) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within ((institutional)) correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(b) Whenever possible, to provide forty hours of work or work training per week.

(c) Whenever possible, to offset tax and other public support costs.

Supervising, management, and custody staff shall be employees of the department.

All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) **CLASS IV: COMMUNITY WORK INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the minimum wage for their work.

(5) **CLASS V: COMMUNITY SERVICE PROGRAMS.** Programs in this class shall be subject to supervision by the department of corrections.

The purpose of this class of industries is to enable an offender, placed on community supervision, to work off all or part of a community service order as ordered by the sentencing court.

Employment shall be in a community service program operated by the state, local units of government, or a nonprofit agency.

To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs.

Sec. 8. Section 4, chapter 296, Laws of 1983 and RCW 72.09.106 are each amended to read as follows:

Class II (~~(institutional)~~) correctional industries may subcontract its data input and microfilm capacities to firms from the private sector. Inmates employed under these subcontracts will be paid in accordance with the Class I free venture industries procedures and wage scale.

Sec. 9. Section 12, chapter 136, Laws of 1981 as amended by section 1, chapter 162, Laws of 1986 and RCW 72.09.110 are each amended to read as follows:

All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement (~~(institutional)~~) correctional industries programs. The secretary shall develop a formula which can be used to determine the extent to which the wages of these inmates will be deducted for this purpose. The amount so deducted shall be placed in the general fund and shall be a reasonable amount which will not unduly discourage the incentive to work. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary shall also provide deductions for restitution, savings, and family support.

Sec. 10. Section 72.60.100, chapter 28, Laws of 1959 as last amended by section 38, chapter 185, Laws of 1987 and RCW 72.60.100 are each amended to read as follows:

Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated for work in (~~(institutional)~~) correctional industries shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person.

Sec. 11. Section 2, chapter 40, Laws of 1972 ex. sess. as last amended by section 7, chapter 52, Laws of 1983 1st ex. sess. and RCW 72.60.102 are each amended to read as follows:

From and after July 1, 1973, any inmate employed in classes I, II, and IV of ~~((institutional))~~ correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW. However, eligibility for benefits for either the inmate or ~~((his))~~ the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the indefinite sentence review board ~~((of prison terms and paroles))~~, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any inmate who is employed in class III or V of ~~((institutional))~~ correctional industries as defined in RCW 72.09.100.

Sec. 12. Section 2, chapter 7, Laws of 1972 ex. sess. and RCW 72.62-.020 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or sub-professionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the ~~((institutional))~~ correctional industries program. Nothing in this section shall be construed to prohibit the correctional industries board of directors from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs.

Sec. 13. Section 4, chapter 286, Laws of 1985 and RCW 72.63.040 are each amended to read as follows:

The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 75.52 RCW, and from ~~((institutional))~~ correctional industries funds.

Passed the House March 6, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 186

[Senate Bill No. 5552]

INTERSTATE TARIFFS—FILING WITH UTILITIES AND TRANSPORTATION COMMISSION NO LONGER REQUIRED

AN ACT Relating to filing requirements for interstate tariffs; and repealing RCW 81.28.070.

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

NEW SECTION. Sec. 1. Section 81.28.070, chapter 14, Laws of 1961 and RCW 81.28.070 are each repealed.

Passed the Senate March 8, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 187

[House Bill No. 2161]

DISTINGUISHED PROFESSORSHIP TRUST FUND—COMBINING OF PROFESSORSHIPS

AN ACT Relating to the distinguished professorship trust fund program; amending RCW 28B.10.871; and adding a new section to chapter 28B.10 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

For the purposes of RCW 28B.10.866 through 28B.10.873, "private donation" includes assessments by commodity commissions authorized to conduct research activities including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040.

Sec. 2. Section 6, chapter 8, Laws of 1987 and RCW 28B.10.871 are each amended to read as follows:

The professorship is the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution. Once state matching funds are released to a local endowment fund, an institution may combine two professorships to support one professorship holder.

The institution is responsible for soliciting private donations, investing and maintaining all endowment funds, administering the professorship, and reporting on the program to the governor and the legislature upon request. The institution may augment the endowment fund with additional private donations. The principal of the invested endowment fund shall not be invaded.

The proceeds from the endowment fund may be used to supplement the salary of the holder of the professorship, to pay salaries for his or her assistants, and to pay expenses associated with the holder's scholarly work.

Passed the House March 14, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 188

[House Bill No. 2051]

FEDERALLY ASSISTED HOUSING—PRESERVATION

AN ACT Relating to federally assisted housing; adding a new chapter to Title 59 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) There is a severe shortage of federally assisted housing within the state of Washington. Over one hundred seventy thousand low and moderate-income households are eligible for federally assisted housing but are unable to locate vacant units.

(2) Within the next twenty years, more than twenty-six thousand existing low-income housing units may be lost as a result of the prepayment of mortgages or loans by the owners, or as a result of the expiration of rental assistance contracts. Over three thousand units of federally assisted housing have already been lost and an additional nine thousand units may be lost within the next two and one-half years.

(3) Recent reductions in federal housing assistance and tax benefits related to low-income housing make it uncertain whether additional units of federally assisted housing will be built or that those lost will be replaced.

(4) The loss of federally assisted housing will adversely affect current tenants and lead to their displacement. It will also drastically reduce the supply of affordable housing in our communities.

It is the purpose of this chapter to preserve federally assisted housing in the state of Washington and to minimize the involuntary displacement of tenants currently residing in such housing.

NEW SECTION. Sec. 2. (1) "Federally assisted housing" means any multifamily housing that is insured, financed, assisted, or held by the secretary of housing and urban development or the secretary of agriculture under:

(a) Section 8 of the United States housing act of 1937, as amended (42 U.S.C. Sec. 1437f);

(b) Section 101 of the housing and urban development act of 1965, as amended (12 U.S.C. Sec. 1701s);

(c) The following sections of the national housing act:

(i) Section 202 (12 U.S.C. Sec. 1701q);

(ii) Section 213 (12 U.S.C. Sec. 1715e);

(iii) Section 221 (d) (3) and (4) (12 U.S.C. Sec. 17151(d) (3) and (4));

(iv) Section 223(f) (12 U.S.C. Sec. 1715n(f));

(v) Section 231 (12 U.S.C. Sec. 1715v); or

(vi) Section 236 (12 U.S.C. Sec. 1715z-1); and

(d) The following sections of the housing act of 1949, as amended:

(i) Section 514 (42 U.S.C. Sec. 1484);

(ii) Section 515 (42 U.S.C. Sec. 1485);

(iii) Section 516 (42 U.S.C. Sec. 1486);

(iv) Section 521(a)(1)(B) (42 U.S.C. Sec. 1490a(a)(1); or

(v) Section 521(a)(2) (42 U.S.C. Sec. 1490a(a)(2)).

(2) "Rental agreement" means any agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provision concerning the use and occupancy of a federally assisted housing unit.

(3) "Owner" means the current or subsequent owner or owners of federally assisted housing.

NEW SECTION. Sec. 3. This act shall not apply to the expiration or termination of a housing assistance contract between a public housing agency and an owner of existing housing participating in either the section 8 certificate or voucher program (42 U.S.C. Sec. 1437f).

NEW SECTION. Sec. 4. All owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or county if in an unincorporated area, in which the property is located, and on the state department of community development, by regular and certified mail.

NEW SECTION. Sec. 5. This chapter shall not in any way prohibit an owner of federally assisted housing from terminating a rental assistance contract or prepaying a mortgage or loan. The requirement in this chapter for notice shall not be construed as conferring any new or additional regulatory power upon the city or county clerk or upon the state department of community development.

NEW SECTION. Sec. 6. The notice to tenants required by section 4 of this act shall state the date of expiration or prepayment and the effect, if any, that the expiration or prepayment will have upon the tenants' rent and other terms of their rental agreement.

The notice to the city or county clerk and to the state department of community development required by section 4 of this act shall state: (1) The name, location, and project number of the federally assisted housing and the type of assistance received from the federal government; (2) the number and size of units; (3) the age, race, family size, and estimated incomes of the tenants who will be affected by the prepayment of the loan or mortgage or expiration of the federal assistance contract; (4) the projected rent increases for each affected tenant; and (5) the anticipated date of prepayment of the loan or mortgage or expiration of the federal assistance contract.

NEW SECTION. Sec. 7. From the date of service of the notice under section 4 of this act until either twelve months have elapsed or expiration or prepayment of the rental assistance contract or mortgage or loan, whichever is later, no owner of federally assisted housing may evict a tenant or demand possession of any federally assisted housing unit, except as authorized by the federal assistance program applicable to the project, prior to expiration or prepayment of the rental assistance contract or mortgage or loan.

NEW SECTION. Sec. 8. From the date of service of the notice under section 4 of this act until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may increase the rent of a federally assisted housing unit above the amount authorized by the federal assistance program applicable to the project prior to expiration or prepayment of the rental assistance contract or mortgage or loan.

NEW SECTION. Sec. 9. From the date of service of the notice under section 4 of this act until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may change the terms of the rental agreement, except as permitted under the existing rental agreement, prior to expiration or prepayment of the rental assistance contract or mortgage or loan.

NEW SECTION. Sec. 10. Any party who is entitled to receive notice under this chapter may bring a civil action to enjoin or recover damages for any violation of this chapter, together with the costs of the suit including reasonable attorneys' fees.

NEW SECTION. Sec. 11. The director of the department of community development shall prepare an annual report on the preservation and loss of federally assisted housing in the state of Washington. The director shall include in this report recommendations for preserving federally assisted housing and for minimizing the involuntary displacement of tenants residing in such housing. The director shall provide a copy of this report to the house of representatives committee on housing and the senate committee on economic development and labor.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. Sections 1 through 11 of this act shall constitute a new chapter in Title 59 RCW.

NEW SECTION. Sec. 14. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the House March 15, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 189

[House Bill No. 1709]

WORKERS' COMPENSATION—MEDICAL AID PURCHASES OF HEALTH CARE GOODS AND SERVICES

AN ACT Relating to medical aid purchases of health care goods and services; amending RCW 51.04.030; reenacting and amending RCW 42.17.310; adding a new section to chapter 51.36 RCW; and making an appropriation.

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

Sec. 1. Section 1, chapter 14, Laws of 1980 as amended by section 8, chapter 200, Laws of 1986 and RCW 51.04.030 are each amended to read as follows:

The director shall, through the division of industrial insurance, supervise the providing of prompt and efficient care and treatment, including care provided by physicians' assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and promulgate and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That, the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into (~~volume-based~~) contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

The director shall make and, from time to time, change as may be, and promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. No service covered under this title shall be charged or paid at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess.

The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the promulgated rules, regulations, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules and regulations promulgated under it.

NEW SECTION. Sec. 2. A new section is added to chapter 51.36 RCW to read as follows:

When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.17 RCW.

Sec. 3. Section 2, chapter 107, Laws of 1987, section 1, chapter 337, Laws of 1987, section 16, chapter 370, Laws of 1987, section 1, chapter 404, Laws of 1987, and section 10, chapter 411, Laws of 1987 and RCW 42.17.310 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: PROVIDED, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: PROVIDED, FURTHER, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

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

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(1) ~~((Except as provided under section 2 of this 1987 act [1987 c 404 § 2];))~~ All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Financial and valuable trade information under section 2 of this act.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 4. The sum of three hundred thousand dollars, or as much thereof as may be necessary, is appropriated from the medical

aid fund to the department of labor and industries for the biennium ending June 30, 1991, to carry out the purposes of this act.

Passed the House March 15, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 190

[Senate Bill No. 5679]

WORKERS' COMPENSATION—DUTIES OF INSURANCE COMMISSIONER— TRANSFER TO DEPARTMENT OF LABOR AND INDUSTRIES

AN ACT Relating to industrial insurance funds; and amending RCW 51.44.070 and 51.44.080.

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

Sec. 1. Section 51.44.070, chapter 23, Laws of 1961 as last amended by section 1, chapter 312, Laws of 1983 and RCW 51.44.070 are each amended to read as follows:

(1) For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the (~~state insurance commissioner~~) department, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

(2) As an alternative to payment procedures otherwise provided under law, in the event of death or permanent total disability to workers of self-insured employers, a self-insured employer may upon establishment of such obligation file with the department a bond, or an assignment of account from a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington, in an amount deemed by the (~~insurance commissioner~~) department to be reasonably sufficient to insure payment of the pension benefits provided by law. The department shall adopt rules governing assignments of account. Such rules shall ensure that the funds are available if needed, even in the case of failure of the banking institution or of the employer's business.

The annuity value for every such case shall be determined by the (~~insurance commissioner~~) department based upon the (~~commissioner's~~) department's experience as to rates of mortality, disability, remarriage, and

interest. The amount of the required bond or assignment of account may be reviewed and adjusted periodically by the department, based upon periodic redeterminations by the (~~insurance commissioner~~) department as to the outstanding annuity value for the case.

Under such alternative, the department shall make the monthly payments from the pension reserve fund for the benefits provided for by RCW 51.32.050 and 51.32.060 to the self-insured beneficiary or beneficiaries and the department shall be reimbursed for all such payments from the particular self-insured employer through periodic charges not less than quarterly in a manner to be determined by the director.

Any self-insured employer electing this alternative method of providing for payment to the beneficiary or beneficiaries shall additionally pay to the department a deposit equal to the first three months' payments otherwise required under RCW 51.32.050 and 51.32.060. Such deposit shall be placed in the reserve fund in accordance with RCW 51.44.140 and shall be returned to the respective self-insured employer when monthly payments are no longer required for such particular obligation.

If a self-insurer delays or refuses to reimburse the department beyond fifteen days after the reimbursement charges become due, there shall be a penalty paid by the self-insurer upon order of the director of an additional amount equal to twenty-five percent of the amount then due which shall be paid into the pension reserve fund. Such an order shall conform to the requirements of RCW 51.52.050.

Sec. 2. Section 51.44.080, chapter 23, Laws of 1961 as last amended by section 8, chapter 161, Laws of 1988 and RCW 51.44.080 are each amended to read as follows:

The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the (~~state insurance commissioner~~) department shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to the fund. (~~He~~) The department shall promptly report the result of (~~his~~) the examination to (~~the department and to~~) the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund

but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund.

Passed the Senate March 14, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 191

[House Bill No. 1719]

EXCESS RETIREMENT BENEFITS—DISTRIBUTION UPON DEATH OF
RECIPIENT

AN ACT Relating to disability benefit provisions for the Washington public employees' retirement system, the teachers retirement system, and the law enforcement officers' and firefighters' retirement system; amending RCW 41.26.470, 41.32.790, and 41.40.670; and declaring an emergency.

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

Sec. 1. Section 8, chapter 294, Laws of 1977 ex. sess. as last amended by section 2, chapter 12, Laws of 1982 and RCW 41.26.470 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-eight.

(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 34.04 RCW)~~ the Administrative Procedure Act, as now or hereafter amended.

(3) 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 such person or persons having an insurable interest in his or her life 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.

Sec. 2. Section 9, chapter 293, Laws of 1977 ex. sess. and RCW 41.32.790 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 department upon recommendation of the retirement board shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 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 sixty-five.

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 offered reemployment by an employer at a comparable compensation, such member shall cease to be eligible for such allowance.

(2) 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 such person or persons having an insurable interest in his or her life 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.

Sec. 3. Section 8, chapter 295, Laws of 1977 ex. sess. as amended by section 5, chapter 18, Laws of 1982 and RCW 41.40.670 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 department upon recommendation of the retirement board shall be eligible to

receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.40.620 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 sixty-five.

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 offered reemployment by an employer at a comparable compensation, such member shall cease to be eligible for such allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section.

(3) 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 such person or persons having an insurable interest in his or her life 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.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 13, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 192

[House Bill No. 1545]

FRAUDULENT FAILURE TO REGISTER A VEHICLE

AN ACT Relating to fraudulent failure to register a vehicle; amending RCW 46.16.010; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to the effective date of this act.

Sec. 2. Section 46.16.010, chapter 12, Laws of 1961 as last amended by section 1, chapter 186, Laws of 1986 and RCW 46.16.010 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than ~~((one hundred sixty-five))~~ three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a motor vehicle in another state by a resident of this state, as defined in RCW 46.16.028, with willful intent to evade the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to three times the amount of delinquent taxes and fees, no part of which may be suspended or deferred.

(3) These provisions shall not apply to farm vehicle as defined in RCW 46.04.181 if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law: PROVIDED FURTHER, That these provisions shall not apply to spray or fertilizer applicator rigs designed and used exclusively for

spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing or loading of spray and fertilizer applicator rigs and not used, designed or modified primarily for the purpose of transportation: PROVIDED FURTHER, That these provisions shall not apply to fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to equipment defined as follows:

"Special highway construction equipment" is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

NEW SECTION. Sec. 3. Section 2 of this act shall take effect September 1, 1989.

Passed the House March 8, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 193

[House Bill No. 1690]

MOTOR VEHICLE FUEL TAX—EXEMPTIONS

AN ACT Relating to the motor vehicle fuel tax; amending RCW 82.36.230, 82.38.030, and 82.42.030; adding a new section to chapter 82.36 RCW; repealing RCW 82.36.302; and declaring an emergency.

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

Sec. 1. Section 82.36.230, chapter 15, Laws of 1961 as last amended by section 2, chapter 156, Laws of 1971 ex. sess. and RCW 82.36.230 are each amended to read as follows:

The provisions of this chapter requiring the payment of taxes ~~((shall))~~ do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while ~~((they are))~~ in interstate or foreign commerce, nor to motor vehicle fuel ~~((;))~~ exported from this state by a qualified distributor, nor to sales by a distributor of motor vehicle fuel ~~((in individual quantities of five hundred gallons or less))~~ for export to another state or country by the purchaser ~~((other than in the supply tank of a motor vehicle. PROVIDED, That such distributor is licensed in the state of destination to collect and remit the applicable destination state taxes thereon)),~~ nor to any motor vehicle fuel sold by a qualified distributor to the armed forces of the United States or to the national guard for use exclusively in ships or for export from this state. The distributor shall report such imports, exports and sales to the director ~~((as hereinafter provided and))~~ at such times, on such forms, and in such detail as ~~((he))~~ the director may require, otherwise the exemption granted in this section ~~((shall be))~~ is null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering ~~((such))~~ exempt sales shall have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.

To claim any exemption from taxes under this section on account of ~~((the exportation))~~ sales by a licensed distributor of motor vehicle fuel ~~((by a distributor other than deliveries in his own equipment, such distributor shall execute an export certificate in such form as shall be furnished by the director, containing a statement, made by some person having actual knowledge of the fact of exportation, that the motor vehicle fuel has been exported from the state, and giving such details with reference to such~~

shipment as the director may require. All export certificates must be completed and filed with the director within three months of the end of the calendar month in which the shipments to which they relate were made, unless the state, territory or country of destination would not be prejudiced with respect to its collection of taxes thereon if the certificate is not filed within such time. The director may, in cases where it is believed no useful purpose would be served by filing of an export certificate, waive the certificate. ~~PROVIDED, That the director for good cause shall have the right to rescind the previous authorization for waiver of the export certificate. Failure to file the certificate within the time required by this section shall not preclude the distributor from filing a claim for refund on motor vehicle fuel exported as provided in RCW 82.36.310 or otherwise in chapter 82.36 RCW, with such information as the director may require to support the validity of such claim))~~ for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring, or both, of the sales or movement of motor vehicle fuel in that state or foreign jurisdiction.

To claim any exemption from taxes under this section on account of sales of motor vehicle fuel to the armed forces of the United States or to the national guard, the distributor shall be required to execute an exemption certificate in such form as shall be furnished by the director, containing a certified statement by an authorized officer of the armed forces having actual knowledge of the purpose for which the exemption is claimed. Any claim for exemption based on such sales shall be made by the distributor within six months of the date of sale. The provisions of this section exempting motor vehicle fuel sold to the armed forces of the United States or to the national guard from the tax imposed hereunder (~~shall~~) do not apply to any motor vehicle fuel sold to contractors purchasing such fuel either for their own account or as the agents of the United States or the national guard for use in the performance of contracts with the armed forces of the United States or the national guard.

~~((In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred gallons or less for export by the purchaser, the distributor shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as shall be prescribed by the director. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the distributor in good faith.))~~

The director may at any time require of any distributor any information (~~he~~) the director deems necessary to determine the validity of the claimed exemption, and failure to supply such data will constitute a waiver

of all right to the exemption claimed. The director is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by distributors in reporting to the director so as to prevent evasion of the tax imposed by this chapter.

Upon request from the officials to whom are entrusted the enforcement of the motor fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces, or the Dominion of Canada, the director may forward to such officials any information which ~~((he))~~ the director may have relative to the import or export of any motor vehicle fuel by any distributor: PROVIDED, That such governmental unit furnish like information to this state.

NEW SECTION. Sec. 2. A new section is added to chapter 82.36 RCW to read as follows:

Sales of motor vehicle fuel to qualified foreign diplomatic and consular missions and their qualified personnel, made under rules prescribed by the director, are exempt from the tax imposed under this chapter if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country. Only those foreign diplomatic and consular missions and their personnel which are determined by the United States department of state as eligible for the tax exemption, may claim this exemption under rules prescribed by the director.

Sec. 3. Section 4, chapter 175, Laws of 1971 ex. sess. as last amended by section 30, chapter 49, Laws of 1983 1st ex. sess. and RCW 82.38.030 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 per gallon or each one hundred cubic feet of compressed natural gas measured at standard pressure and temperature on the use of special fuel in any motor vehicle operated upon the highways of this state during the fiscal year for which such rate is applicable.

(2) The tax shall be collected by the special fuel dealer and shall be paid over to the department as hereinafter provided: (a) With respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles or into storage facilities used for the fueling of motor vehicles at unbonded service stations in this state; or (b) in all other transactions where the purchaser is not the holder of a valid special fuel license issued pursuant to this chapter allowing the purchase of untaxed special fuel, except sales of special fuel for export. To claim an exemption on account of sales by a licensed special fuel dealer for export, the purchaser shall obtain from the selling special fuel dealer, and such selling special fuel dealer must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged

by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of special fuel in that state or foreign jurisdiction.

(3) The tax shall be paid over to the department by the special fuel user as hereinafter provided with respect to the taxable use of special fuel upon which the tax has not previously been imposed.

It is expressly provided that delivery of special fuel may be made without collecting the tax otherwise imposed, when such deliveries are made by a bonded special fuel dealer to special fuel users who are authorized by the department as hereinafter provided, to purchase fuel without payment of tax to the bonded special fuel dealer.

Sec. 4. Section 3, chapter 10, Laws of 1967 ex. sess. as amended by section 4, chapter 25, Laws of 1982 1st ex. sess. and RCW 82.42.030 are each amended to read as follows:

The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state shall not apply to aircraft fuel sold for export, nor to aircraft fuel used for the following purposes: (1) The operation of aircraft when such use is by any air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended; (2) the operation of aircraft for testing or experimental purposes; (3) the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers; and (4) the operation of aircraft in the operations of a local service commuter: PROVIDED, That the director's determination as to a particular activity for which aircraft fuel is used as being an exemption under this section, or otherwise, shall be final.

To claim an exemption on account of sales by a licensed distributor of aircraft fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of aircraft fuel in that state or foreign jurisdiction.

NEW SECTION. Sec. 5. Section 59, chapter 145, Laws of 1967 ex. sess. and RCW 82.36.302 are each repealed.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the House April 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 194

[House Bill No. 1776]

VOLUNTEER FIREFIGHTERS' RELIEF AND PENSION FUNDS

AN ACT Relating to the volunteer firefighters' administrative fund; amending RCW 41.24.030; adding a new section to chapter 41.24 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 3, chapter 261, Laws of 1945 as last amended by section 4, chapter 296, Laws of 1986 and RCW 41.24.030 are each amended to read as follows:

~~((1))~~ (1) There is created in the state treasury a trust fund for the benefit of the ~~((firemen))~~ firefighters of the state covered by this chapter, which shall be designated the volunteer ~~((firemen's))~~ firefighters' relief and pension principal fund and shall consist of:

~~((1))~~ (a) All bequests, fees, gifts, emoluments, or donations given or paid to the principal fund.

~~((2))~~ (b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as herein provided as follows:

~~((a))~~ (i) Three dollars for each volunteer or part-paid member of its fire department;

~~((b))~~ (ii) A sum equal to one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

~~((3))~~ (c) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as herein provided, an annual fee of thirty dollars for each of its ~~((firemen))~~ firefighters electing to enroll therein, ten dollars of which shall be paid by the municipality and twenty dollars of which shall be paid by the ~~((fireman))~~ firefighter.

~~((4))~~ (d) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

~~((5))~~ (e) The state investment board, upon request of the state treasurer shall invest such portion of the amounts credited to the principal fund

as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments may be made in such bonds, notes or other obligations now or hereafter authorized as an investment for the funds of the public employees' retirement system.

~~((6))~~ (f) All bonds or other obligations purchased according to ~~((subsection (5)))~~ (c) of this ~~((section))~~ subsection shall be forthwith placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund shall be credited to and form a part of the principal fund.

All amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(2) The volunteer firefighters' relief and pension administrative fund is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operating expenses of the volunteer firefighters' relief and pension principal fund, the operating expenses of volunteer firefighters' relief and pension administrative fund, or for transfer from the administrative fund to the principal fund.

(a) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(b) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative fund, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium.

NEW SECTION. Sec. 2. A new section is added to chapter 41.24 RCW to read as follows:

The state board is authorized to pay from the interest earnings of the trust funds of the system lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs

of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

NEW SECTION. Sec. 3. There is transferred from the firefighters' relief and pension principal fund to the firefighters' relief and pension administrative fund the sum of one hundred thousand dollars for the purposes of this act.

NEW SECTION. Sec. 4. Sections 1, 2, and 3 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House March 14, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 195

[House Bill No. 2075]

TWENTY-FOUR HOUR HEADLIGHT POLICY

AN ACT Relating to motor vehicle safety; and adding a new section to chapter 47.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.04 RCW to read as follows:

On the recommendation of their public works departments or designees, counties or cities can petition the department of transportation to create a "twenty-four hour headlight policy" on state highways in their respective jurisdictions. The department shall develop criteria for approval or disapproval, such as traffic volume, accident statistics, and costs of signs. The department shall notify all counties about this program.

A jurisdiction requesting such a policy shall periodically report to the department regarding its educational efforts. A jurisdiction may petition the department to remove such a policy.

The jurisdiction shall educate its citizens on the "twenty-four hour headlight policy." The department shall place and maintain appropriate signs along the designated highway. Participating jurisdictions shall share in the cost of signing in an amount as determined by the department.

The department shall periodically report to the legislative transportation committee regarding petitions and the subsequent accident statistics.

By January 1, 1995, the department shall report to the legislature on the findings of the program.

Passed the House March 14, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 196

[Senate Bill No. 5592]

HIGHWAYS—LIABILITY OF STATE FOR DAMAGES TO FACILITIES LOCATED ON—LIMITATIONS

AN ACT Relating to damages to facilities located on state highways; and adding a new section to chapter 47.44 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.44 RCW to read as follows:

In any action for damages against the state of Washington, its agents, contractors, or employees by reason of damages to a utility or other facility located on a state highway, the damages are limited to the cost of repair of the utility or facility and are recoverable only in those instances where the utility or facility is authorized to be located on the state highway. However, the state is subject to the penalties provided in RCW 19.122.070 (1) and (2) only if the state has failed to give a notice meeting the requirements of RCW 19.122.030 to utilities or facilities that are authorized to be located on the state highway.

Passed the Senate March 14, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 197

[House Bill No. 1231]

WILDLIFE DEPARTMENT—FURS AND SKINS—DISPOSAL

AN ACT Relating to wildlife management; and amending RCW 77.12.240.

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

Sec. 1. Section 77.12.240, chapter 36, Laws of 1955 as last amended by section 33, chapter 506, Laws of 1987 and RCW 77.12.240 are each amended to read as follows:

The director may authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management or research.

The director or other employees of the department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. (~~(Skins or furs shall be sold at public auction at a time and location determined by the director.)~~) Proceeds from ~~((the))~~ sales shall be deposited in the state treasury to be credited to the state wildlife fund.

Passed the House April 15, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 198

[Substitute House Bill No. 1250]

HEARING AID FITTERS AND DISPENSERS—LICENSING

AN ACT Relating to the fitting and dispensing of hearing aids; amending RCW 18.35.020, 18.35.040, 18.35.050, 18.35.080, 18.35.090, 18.35.105, 18.35.150, 18.35.190, 18.35.230, 18.35.240, and 18.35.250; and adding a new section to chapter 18.35 RCW.

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

Sec. 1. Section 2, chapter 106, Laws of 1973 1st ex. sess. as amended by section 2, chapter 39, Laws of 1983 and RCW 18.35.020 are each amended to read as follows:

No person shall engage in the fitting and dispensing of hearing aids or imply or represent that he or she is engaged in the fitting and dispensing of hearing aids unless he or she holds a valid license issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of a hearing aid establishment is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or employees of the establishment engaged in fitting and dispensing hearing aids. Every establishment shall have in its employ at least one licensed fitter-dispenser at all times, and shall annually submit proof that all audiometric equipment at that establishment has been properly calibrated.

Sec. 2. Section 4, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 30, chapter 7, Laws of 1985 and RCW 18.35.040 are each amended to read as follows:

An applicant for license shall be at least eighteen years of age and shall pay a fee determined by the director as provided in RCW 43.24.086. An applicant shall not be issued a license under the provisions of this chapter unless the applicant:

(1) Satisfactorily completes the examination required by this chapter;
or

(2) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with which the department has entered into a reciprocal agreement, and shows evidence satisfactory to the department that the applicant is licensed in good standing in the other jurisdiction(~~(; and~~

~~(3) Provides proof satisfactory to the department that the licensee has obtained the surety bond coverage required under this chapter)).~~

Sec. 3. Section 5, chapter 106, Laws of 1973 1st ex. sess. as amended by section 5, chapter 39, Laws of 1983 and RCW 18.35.050 are each amended to read as follows:

Except as otherwise provided in this chapter an applicant for license shall appear at a time and place and before such persons as the department may designate to be examined by written and practical tests. The department shall give an examination (~~((during the second full week in January))~~) in May and ((during the third full week in July)) November of each year. The examination shall be reviewed annually by the council and the department, and revised as necessary. No examination of any established association may be used as the exclusive replacement for the examination approved and developed by the council.

Sec. 4. Section 8, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 32, chapter 7, Laws of 1985 and RCW 18.35.080 are each amended to read as follows:

The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of a fee determined by the director as provided in RCW 43.24.086 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until (~~((December 31st of the year in which it is issued))~~) the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday.

Sec. 5. Section 9, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 33, chapter 7, Laws of 1985 and RCW 18.35.090 are each amended to read as follows:

Each person who engages in the fitting and dispensing of hearing aids shall (~~((annually, on the anniversary of his or her license, or))~~) as the department prescribes by rule, pay to the department a fee established by the director under RCW 43.24.086 for a renewal of the license and shall keep the license conspicuously posted in the place of business at all times. (~~((A thirty-day grace period shall be allowed after the applicable renewal date during which licenses may be renewed on payment of a penalty fee established by the director under RCW 43.24.086.))~~) Any person who fails to renew his or her license prior to the expiration (~~((of the grace period))~~) date must pay a penalty fee in addition to the renewal fee and satisfy the requirements ((of

~~this chapter for initial licensure, including taking a new examination)) that may be set forth by rule promulgated by the director for reinstatement.~~ The director may by rule establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal.

Sec. 6. Section 16, chapter 39, Laws of 1983 and RCW 18.35.105 are each amended to read as follows:

Each licensee shall keep records of all services rendered for a period of three years. These records shall contain the names and addresses of all persons to whom services were provided, the date the warranty expires, a description of the services and the dates the services were provided, and copies of any contracts and receipts. All records, as required pursuant to this chapter or by rule, kept by licensees shall be owned by the establishment and shall remain with the establishment in the event the licensee changes employment. If a contract between the establishment and the licensee provides that the records are to remain with the licensee, copies of such records shall be provided to the establishment.

Sec. 7. Section 15, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 33, chapter 287, Laws of 1984 and RCW 18.35.150 are each amended to read as follows:

(1) There is created hereby the council on hearing aids. The council shall consist of nine members to be appointed by the governor.

(2) Members of the council shall be residents of this state. Five members shall be persons experienced in the fitting of hearing aids who shall hold valid licenses under this chapter. One member shall be a medical doctor specializing in diseases of the ear. One member shall be a nondispensing audiologist. Two members shall represent the public.

(3) ~~The term of office of a member is three years((except that the governor may appoint the initial members to one or two year terms to ensure an orderly succession of members)). No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until a successor has been appointed ((and qualifies. Before a member's term expires;)).~~ The governor shall either reappoint the member or appoint a successor to assume ((his)) the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chairman of the council shall be elected from the membership of the council at the beginning of each year.

(5) The council shall meet at least once each year, at a place, day and hour determined by the council, unless otherwise directed by a majority of council members. The council shall also meet at such other times and places as are requested by the department or by three members of the council.

(6) Members of the council shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Sec. 8. Section 19, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 24, chapter 150, Laws of 1987 and RCW 18.35.190 are each amended to read as follows:

~~((+))~~ In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed hereunder, or by any assignee or transferee thereof, arising out of the business of fitting and dispensing of hearing aids, it shall be necessary to allege and prove that the licensee at the time of the transaction held a valid license as required by this chapter, and that such license has not been suspended or revoked pursuant to RCW 18.35.110 ~~((or))~~, 18.35.120, or 18.130.160.

~~((2))~~ In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing aid shall have the right to rescind the transaction for other than the seller's breach if:

(a) The purchaser, for reasonable cause, returns the hearing aid or holds it at the seller's disposal. PROVIDED, That the hearing aid is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the council but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser in wearing a hearing aid; and

(b) By sending notice of such cancellation to the licensee at the licensee's place of business by certified mail, return receipt requested, which shall be posted not later than thirty days following the date of delivery. PROVIDED, That in the event of cancellation pursuant to this subsection or as otherwise provided by law, the licensee shall, without request, refund to the purchaser postmarked within ten days after such cancellation all deposits, including any down payment less fifteen percent of the total purchase price or one hundred dollars per hearing aid, whichever is less, and shall return all goods traded in to the licensee on account or in contemplation of the sale less any reasonable costs actually incurred in making ready for sale, goods so traded in. AND PROVIDED FURTHER, That the buyer shall incur no additional liability for such cancellation.

(c) Where a purchaser has taken the steps described in subsections (a) and (b) above to cancel the purchase, and the purchaser subsequently agrees with the seller to extend the trial or rescission period, the purchaser remains entitled to receive the refund described in subsection (2)(b) of this section upon demand made within sixty days of the original date of delivery or such other time as agreed to in writing by both parties. Written notice of the last date for demanding a refund shall be provided to the purchaser at the time the trial or rescission period is extended.))

Sec. 9. Section 19, chapter 39, Laws of 1983 and RCW 18.35.230 are each amended to read as follows:

(1) Each licensee shall name a registered agent to accept service of process for any violation of this chapter or rule adopted under this chapter.

(2) The registered agent may be released at the expiration of ~~((four))~~ one year((s)) after the license issued under this chapter has expired or been revoked ~~((if no legal action has been instituted against the licensee))~~.

(3) ~~((Any licensee who fails))~~ Failure to name a registered agent for service of process for violations of this chapter or rules adopted under this chapter may ~~((also be served by filing two copies of the complaint with the director. Service on the director constitutes service on the licensee in this event. The director then shall transmit one copy of the complaint to the licensee within five business days after receipt of the complaint))~~ be grounds for disciplinary action.

Sec. 10. Section 18, chapter 39, Laws of 1983 and RCW 18.35.240 are each amended to read as follows:

(1) Every establishment engaged in the fitting and dispensing of hearing aids shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the director.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. ~~((The security deposited with the department in lieu of the surety bond shall be returned to the establishment at the expiration of four years after any disciplinary proceedings involving employees or agents of the establishment, if no legal action has been instituted against the establishment or on the security deposit at the expiration of the four-year period))~~ All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds with the state treasurer. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing aids if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold or has discontinued the fitting and dispensing of hearing aids in order that the cash deposit or other security may be released at the end of one year from that date.

~~((2))~~ (4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

~~((3)) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.~~

~~(4))~~ (5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

Sec. 11. Section 20, chapter 39, Laws of 1983 and RCW 18.35.250 are each amended to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee, agent, or establishment for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond ~~((or security))~~ shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond ~~((, or in case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration of revocation of the license)).~~ An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing aids by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The director shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The director shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security.

NEW SECTION. Sec. 12. A new section is added to chapter 18.35 RCW to read as follows:

(1) In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing aid shall have the right to rescind the transaction for other than the seller's breach if:

(a) The purchaser, for reasonable cause, returns the hearing aid or holds it at the seller's disposal, if the hearing aid is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the council but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser about wearing a hearing aid; and

(b) The purchaser sends notice of the cancellation to the licensee at the licensee's place of business by certified mail, return receipt requested, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the seller may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing aid is in the possession of the seller or the seller's representative during the thirty days following the date of delivery, the deadline for posting the notice of rescission shall be extended by an equal number of days that the aid is in the possession of the seller or the seller's representative. Where the hearing aid is returned to the seller for any inspection for modification or repair, and the seller has notified the purchaser that the hearing aid is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing aid or instructing the seller to forward it to the purchaser, then the deadline for giving notice of the rescission shall begin seven working days after this notice.

(2) If the transaction is rescinded under this section or as otherwise provided by law and the hearing aid is returned to the licensee, the licensee shall refund to the purchaser any payments or deposits for that hearing aid. However, the licensee may retain, for each hearing aid, fifteen percent of the total purchase price or one hundred dollars, whichever is less. The licensee shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making those goods ready for resale. The refund shall be made within ten days after the rescission. The buyer shall incur no additional liability for such rescission.

Passed the House March 2, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 199

[House Bill No. 1400]

FAMILY COURT COMMISSIONERS

AN ACT Relating to family court commissioners; and amending RCW 26.12.050.

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

Sec. 1. Section 5, chapter 50, Laws of 1949 as amended by section 1, chapter 83, Laws of 1965 ex. sess. and RCW 26.12.050 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in class "A" counties and counties of the first through ninth classes, the superior court may appoint the following persons to assist the family court in disposing of its business: ~~((PROVIDED), That in counties of the third through ninth class, such positions may not be created without prior consent of the county commissioners:~~

~~((+))~~ (a) One or more ~~((competent persons))~~ attorneys to act as family court commissioners, and

~~((+))~~ (b) Such investigators, stenographers and clerks as the court shall find necessary to carry on the work of the family court.

(2) The county legislative authority must approve the creation of family court commissioner positions.

(3) The appointments provided for in this section shall be made by majority vote of the judges of the superior court of the county and may be made in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Family court commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the ~~((county commissioners shall determine))~~ county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a family court commissioner may also be appointed to any other commissioner position authorized by law.

Passed the House April 15, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 200

[Senate Bill No. 5154]

SHELLFISH—COMMERCIAL HARVESTING AND PROCESING—SANITARY CONTROL

AN ACT Relating to sanitary control of shellfish; amending RCW 69.30.010; adding new sections to chapter 69.30 RCW; and prescribing penalties.

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

Sec. 1. Section 1, chapter 144, Laws of 1955 as last amended by section 1, chapter 51, Laws of 1985 and RCW 69.30.010 are each amended to read as follows:

When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, and clams, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation ((and/or)), association, or the authorized agents of any such entities.

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

(7) "Secretary" means the secretary of social and health services or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horseclams; (d) six geoducks; or (e) fifty pounds of hard or soft shell clams.

NEW SECTION. Sec. 2. A new section is added to chapter 69.30 RCW to read as follows:

The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner.

NEW SECTION. Sec. 3. A new section is added to chapter 69.30 RCW to read as follows:

As limited by section 4 of this act, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030.

NEW SECTION. Sec. 4. A new section is added to chapter 69.30 RCW to read as follows:

(1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund.

Passed the Senate March 8, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 201

[Substitute House Bill No. 2136]

MOBILE HOME RELOCATION ASSISTANCE

AN ACT Relating to mobile home relocation assistance; amending RCW 59.22.060, 59.22.070, 59.20.060, and 59.20.080; adding a new chapter to Title 59 RCW; prescribing penalties; and declaring an emergency.

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) "Director" means the director of the department of community development.

(2) "Department" means the department of community development.

(3) "Fund" means the mobile home park relocation fund established under section 5 of this act consisting of tenant and landlord contributions.

(4) "Low-income" means at or below eighty percent of median income as defined by the United States department of housing and urban development, for the county or standard metropolitan statistical area where the park is located.

(5) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(6) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(7) "Relocate" means to remove the mobile home from the mobile home park being closed.

(8) "Relocation assistance" means the monetary assistance provided under section 2 of this act.

NEW SECTION. Sec. 2. (1) If a mobile home park is closed or converted to another use, all affected park tenants are entitled to relocation assistance from the park-owner or the fund at the time the tenant relocates as follows: (a) For a single-wide mobile home, four thousand five hundred dollars; and (b) for a double-wide or larger mobile home, seven thousand five hundred dollars.

(2) When a tenant is forced to relocate before July 1, 1991, the payment of relocation assistance as provided by this section shall be paid by the park-owner. However, if the tenant has been given notice to vacate prior to April 1, 1989, and the tenant has not yet relocated as of the effective date of this act, the payment of relocation assistance by the park-owner shall be required only if the tenant is low income.

(3) When a tenant is forced to relocate after June 30, 1991, the payment of relocation assistance as provided in this section shall be shared as follows: The landlord or park-owner shall provide one-third and the fund shall provide two-thirds.

(4) After July 1, 1992, (a) if twenty-four months' notice of closure is given, the landlord or park-owner shall provide five hundred dollars for a single-wide home or one thousand dollars for a double-wide or larger home and the fund shall provide the balance of the relocation assistance; (b) if the park-owner gives less than twenty-four months' notice the park-owner shall provide one-third and the fund shall provide two-thirds of the relocation assistance.

(5) The parkowner shall make any payment required by this chapter when demanded by the department; however, the department shall not demand such payment earlier than thirty days prior to the expected relocation date of the tenant. If the landlord does not pay his or her portion of the relocation assistance to the department when required by this chapter, the department shall have a lien on the real property on which the park is located. Such lien shall be collected as delinquent general property taxes and shall be forwarded to the department by the county treasurer.

(6) The director or his or her designee shall approve all expenditures from the fund.

(7) Relocation assistance contributions required from landlords or park-owners by this section shall be reduced by the amount paid or required to be paid under any other law for the same mobile home park tenant for the same relocation.

NEW SECTION. Sec. 3. Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. Notice must also include the tenant's right to relocation assistance, if applicable. This section shall apply to all park closures even though notice may have been given prior to the effective date of this act.

NEW SECTION. Sec. 4. A tenant is not entitled to relocation assistance under section 2 of this act if (1) the tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any notice of termination required by the landlord under this chapter has been given, or (2) a person purchases a mobile home already situated in the park or moves a mobile home into the park after a closure or change of use notice has been given and the person has received actual prior notice of the change or closure.

NEW SECTION. Sec. 5. (1) The mobile home park relocation fund is created in the custody of the state treasurer. All legislative appropriations for mobile home relocation assistance, receipts from assessments collected under section 6 of this act, and amounts required to be paid by park-owners shall be deposited into the fund. Expenditures from the fund may be used only for administration of the fund, relocation assistance under section 2 of this act, or transfer to the mobile home park purchase fund under subsection (2) of this section. Only the director of community development or the director's designee may authorize expenditures from the fund. All relocation payments, including those due from the park-owner shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) The state treasurer shall maintain the fund and shall invest the fund moneys. Moneys earned on these investments shall be deposited in the fund and shall be used for the same purposes as other fund moneys. Unexpended and unencumbered moneys that remain in the fund at the end of the fiscal year do not revert to the state general fund but remain in the fund, separately accounted for, as a contingency reserve, or if the director determines at the end of any fiscal year beginning after December 31, 1991, that the fund contains a surplus over the projected amount needed for relocation during the upcoming year(s), any surplus may be transferred to the mobile home park purchase fund created by chapter 59.22 RCW. However, the director may cause any uncommitted funds in the mobile home park purchase fund which were transferred from the mobile home park relocation fund to be transferred back to the mobile home park relocation fund if that fund cannot otherwise meet its current obligations.

(3) A tenant who is entitled to relocation assistance under this chapter is entitled to payment only after submitting an application which includes: (a) A copy of the notice from the parkowner that the tenancy is terminated due to closure of the park; (b) a copy of the rental agreement currently in force; and (c) a copy of the contract entered into for the purpose of relocating the mobile home, which includes the date of relocation.

(4) The director may adopt rules for the administration of the fund.

(5) The department may use money from the fund to offset the necessary costs of administering the fund. Administrative cost reimbursement shall not exceed fifty thousand dollars or five percent of the revenue to the

fund for any given fiscal year, whichever is greater, to offset expenses incurred during that year.

NEW SECTION. Sec. 6. (1) There is hereby placed on all mobile homes located in mobile home parks an annual assessment of eleven dollars per mobile home beginning on January 1, 1990. The assessment shall be collected by the county treasurer or treasurers within the county or counties where the mobile home or the mobile home park is located. Notice of the assessment created under this section may be included on the notice of property taxes due, or may be sent separately from the notice of property taxes due. The assessment created under this section shall be due at the same time property taxes are due and shall constitute a lien on the mobile home upon which the assessment is imposed. Delinquent assessments created under this section shall be foreclosed in the same manner, and subject to the same time schedules, interest, and penalties as delinquent property taxes. County treasurers may impose a fee for collecting the assessment created in this section not to exceed five percent of the dollar value of the collection of assessments created under this section. The county treasurer may collect the assessment for 1990 at the same time the county treasurer collects the assessment for 1991 if the county treasurer would experience undue hardship in collecting the 1990 assessment in that year.

(2) Upon the request of the treasurer of the county or counties where the mobile home park is located, each park-owner shall provide the county treasurer with a list of all tenants residing in the park on January 1, 1989. This list shall be mailed by August 1, 1989, to the treasurer or treasurers of the county or counties where the mobile home park is located. The list shall include the name and address of each tenant, and the mobile home tax number of each tenant if available. Upon the request of the treasurer of the county or counties where the mobile home park is located, the park-owners shall update the list of tenants residing in the park.

(3) The assessments collected under subsection (1) of this section shall be forwarded to the state treasurer, less any administration fee collected by the county treasurer under this section. The state treasurer shall deposit one dollar of the assessment collected per mobile home in the mobile home affairs account created by RCW 59.22.070; the remainder of the assessment forwarded to the state treasurer under this subsection shall be deposited in the mobile home park relocation fund created under section 5 of this act.

(4) The department of revenue, the state treasurer, and the county treasurers may enact any rules necessary to carry out this section.

Sec. 7. Section 4, chapter 280, Laws of 1988 and RCW 59.22.060 are each amended to read as follows:

(1) Every landlord shall register by October 1, 1988, with the department of revenue under such rules as that department shall prescribe.

(2) Every landlord shall pay a fee of one dollar per lot per year, ~~((and in addition, shall collect from each tenant on January 1 of each year a fee~~

~~of one dollar per year for each lot rented by the tenant. Both fees)) except for unoccupied lots. This fee shall be remitted by the landlord to the department of revenue under such rules as the department shall prescribe. ((The fee required by this chapter, to be collected by the landlord, shall be deemed to be held in trust by the landlord until paid to the department of revenue, and any landlord who appropriates or converts the fee collected to his or her own use other than the payment to the department shall be guilty of a gross misdemeanor. The provisions of chapter 82.32 RCW shall apply to the collection and enforcement of this fee.)) The department of revenue shall forward the one-dollar fee per lot paid by the landlord to the mobile home affairs account created by RCW 59.22.070.~~

(3) This section shall take effect on January 1, 1990.

Sec. 8. Section 5, chapter 280, Laws of 1988 and RCW 59.22.070 are each amended to read as follows:

There is created in the custody of the state treasurer a special account known as the mobile home affairs account. ~~((All fees collected pursuant to RCW 59.22.060 shall be placed in that account.))~~

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department of community development for the purpose of implementing RCW 59.22.050 and 59.22.060.

Sec. 9. Section 6, chapter 279, Laws of 1977 ex. sess. as last amended by section 1, chapter 58, Laws of 1984 and RCW 59.20.060 are each amended to read as follows:

(1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) (i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that the park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice. The covenant or statement required by this subsection must appear in print that is larger than the other text of the lease and must be set off by means of a box, blank space, or comparable visual device;

The requirements of this subsection shall apply to tenancies initiated after the effective date of this act.

(f) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

~~((f))~~ (g) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

~~((g))~~ (h) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of his space in relation to other tenants' spaces; and

~~((h))~~ (i) A statement of the current zoning of the land on which the mobile home park is located.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of said vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in

rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee";

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator.

NEW SECTION. Sec. 10. If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)(e)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord.

NEW SECTION. Sec. 11. Before a mobile home park-owner may close a mobile home park or convert it to another use, the owner shall pay amounts owed for relocation assistance under section 2 of this act to the state treasurer for deposit into the fund. A park-owner may give notice as required by RCW 59.20.080 and this chapter before payment of these amounts.

Sec. 12. Section 8, chapter 279, Laws of 1977 ex. sess. as last amended by section 5, chapter 150, Laws of 1988 and RCW 59.20.080 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the landlord shall not terminate a tenancy, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of

the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the ((proposed)) effective date of such change, except that for the period of six months following the effective date of this act the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "drug-related activity." "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW.

(2) A landlord may terminate any tenancy without cause. Such termination shall be effective twelve months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later: PROVIDED, That a landlord shall not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4) or is intended to circumvent the provisions of (1)(e) of this section.

(3) Within five days of a notice of eviction as required by subsection (1)(a) or (2) of this section, the landlord and tenant shall submit any dispute, including the decision to terminate the tenancy without cause, to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section, or for a period of thirty days for an eviction under subsection

(2) of this section. It is a defense to an eviction under subsection (1)(a) or (2) of this section that a landlord did not participate in the mediation process in good faith.

NEW SECTION. Sec. 13. Any unit of local government may, with the director's approval, give or loan moneys to the fund if insufficient moneys are available to pay the fund's share of relocation assistance under section 2 of this act. When sufficient moneys exist in the fund, the director shall approve the repayment of the loaned moneys to the local government.

NEW SECTION. Sec. 14. A tenant may, with the written approval of his or her attorney at law, waive or compromise their right to relocation assistance under this chapter.

NEW SECTION. Sec. 15. Any person who intentionally violates, intentionally attempts to evade, or intentionally evades the provisions of this act is guilty of a misdemeanor.

NEW SECTION. Sec. 16. Sections 1 through 6, 10, 11, 13, 14, and 15 of this act constitute a new chapter in Title 59 RCW.

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

Passed the House April 19, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor April 28, 1989.

Filed in Office of Secretary of State April 28, 1989.

CHAPTER 202

[Substitute House Bill No. 1894]

DENTISTS AND DENTAL HYGIENISTS—LICENSING AND SCOPE OF PRACTICE

AN ACT Relating to technical changes in chapters 18.29 and 18.32 RCW; amending RCW 18.29.060, 18.32.030, 18.32.035, 18.32.037, 18.32.040, 18.32.050, 18.32.100, 18.32.110, 18.32.120, 18.32.160, 18.32.180, 18.32.220, 18.32.500, 18.32.520, 18.32.530, and 18.32.600; adding new sections to chapter 18.29 RCW; adding new sections to chapter 18.32 RCW; recodifying RCW 18.32.085, 18.32.290, 18.32.310, 18.32.320, 18.32.322, 18.32.324, 18.32.326, 18.32.328, 18.32.330, 18.32.340, 18.32.350, and 18.32.360; repealing RCW 18.29.020, 18.29.031, 18.29.040, 18.29.070, 18.32.070, 18.32.210, and 18.32.225; and making an appropriation.

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

NEW SECTION. Sec. 1. REQUIREMENTS FOR LICENSURE.

(1) The department shall issue a license to any applicant who, as determined by the director:

(a) Has successfully completed an educational program approved by the director. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;

(b) Has successfully completed an examination administered by the dental hygiene examining committee; and

(c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation necessary to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.086. The fee shall be submitted with the application.

NEW SECTION. Sec. 2. RENEWALS. The director shall establish by rule the requirements for renewal of licenses. The director shall establish a renewal and late renewal penalty fee as provided in RCW 43.24.086. Failure to renew invalidates the license and all privileges granted by the license. The director shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and requirements for relicensure.

NEW SECTION. Sec. 3. DENTAL HYGIENE EXAMINING COMMITTEE—CREATION—MEMBERSHIP—TERMS—REMOVAL. There shall be a dental hygiene examining committee consisting of three practicing dental hygienists and one public member appointed by the director, to be known as the Washington dental hygiene examining committee. Each dental hygiene member shall be licensed and have been actively practicing dental hygiene for a period of not less than five years immediately before appointment and shall not be connected with any dental hygiene school. The public member shall not be connected with any dental hygiene program or engaged in any practice or business related to dental hygiene. Members of the committee shall be appointed by the director to prepare and conduct examinations for dental hygiene licensure. Members shall be appointed to serve for terms of three years from October 1 of the year in which they are appointed. Terms of the members shall be staggered. Each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified. Any member of the committee may be removed by the director for neglect of duty, misconduct, malfeasance, or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard

thereon. Members of the committee shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 4. COMMITTEE'S AUTHORITY. The director in consultation with the Washington dental hygiene examining committee shall:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to prepare and conduct examinations for dental hygiene licensure;
- (2) Require an applicant for licensure to pass an examination consisting of written and practical tests upon such subjects and of such scope as the committee determines;
- (3) Set the standards for passage of the examination;
- (4) Administer at least two examinations each calendar year in conjunction with examinations for licensure of dentists under chapter 18.32 RCW. Additional examinations may be given as necessary; and
- (5) Establish by rule the procedures for an appeal of an examination failure.

NEW SECTION. Sec. 5. DIRECTOR'S AUTHORITY. In addition to any other authority provided by law, the director may:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) Establish forms necessary to administer this chapter;
- (3) Issue a license to any applicant who has met the education and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;
- (4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;
- (5) Maintain the official departmental record of all applicants and licensees;
- (6) Establish, by rule, the minimum education requirements for licensure, including but not limited to approval of educational programs; and
- (7) Establish and implement by rule a continuing education program.

NEW SECTION. Sec. 6. APPROVAL OF EDUCATIONAL PROGRAMS. The director shall establish by rule the standards and procedures for approval of educational programs and may contract with individuals or organizations having expertise in the profession or in education to report to the director information necessary for the director to evaluate the educational programs. The director may establish a fee for educational program

evaluation. The fee shall be set to defray the administrative costs for evaluating the educational program, including, but not limited to, costs for site evaluation.

NEW SECTION. Sec. 7. EXAMINATIONS. (1) The director shall establish the date and location of the examination. Applicants who meet the education requirements for licensure shall be scheduled for the next examination following the filing of the application. The director shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the scope of practice and on laws in the state of Washington regulating dental hygiene practice.

(3) The committee shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

NEW SECTION. Sec. 8. IMMUNITY. The director, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties.

NEW SECTION. Sec. 9. COMMITTEE MEETINGS—QUORUM—EFFECT OF VACANCY. The committee shall meet at least once a year and at such times as may be necessary for the transaction of business.

A majority of the committee shall constitute a quorum.

A vacancy in the committee membership shall not impair the right of the remaining members of the committee to exercise any power or to perform any duty of the committee, so long as the power is exercised or the duty performed by a quorum of the committee.

NEW SECTION. Sec. 10. EXEMPTIONS FROM CHAPTER. The following practices, acts, and operations are excepted from the operation of this chapter:

(1) The practice of dental hygiene in the discharge of official duties by dental hygienists in the United States armed services, coast guard, public health services, veterans' bureau, or bureau of Indian affairs;

(2) Dental hygiene programs approved by the director and the practice of dental hygiene by students in dental hygiene programs approved by the director, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW acting as instructors.

NEW SECTION. Sec. 11. CAPTIONS NOT LAW. Section headings as used in this act do not constitute any part of the law.

Sec. 12. Section 31, chapter 16, Laws of 1923 as last amended by section 21, chapter 7, Laws of 1985 and RCW 18.29.060 are each amended to read as follows:

Upon passing an examination and meeting the requirements as provided in (~~RCW 18.29.031~~) section 1 of this 1989 act, the director of licensing shall issue to the successful applicant a license as dental hygienist. The license shall be displayed in a conspicuous place in the operation room where such licensee shall practice.

Sec. 13. Section 1, chapter 130, Laws of 1951 as last amended by section 35, chapter 158, Laws of 1979 and RCW 18.32.030 are each amended to read as follows:

The following practices, acts, and operations are excepted from the operation of the provisions of this chapter:

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless (~~he~~) the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States (~~army, navy~~) federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved (~~by the board~~) under RCW 18.32.040, and the practice of dentistry by students in Washington state dental schools or colleges approved by the board, when acting under the direction and supervision of (~~registered and~~) Washington state-licensed (~~dentists acting as instructors~~) dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the board of dental examiners;

(5) The use of roentgen and other rays for making (~~radiograms~~) radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by (~~said~~) the dentist, and (~~said~~) the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the director of licensing or (~~his~~) the director's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

~~(9) ((A legal practitioner of another state making a clinical demonstration before a medical or dental society, or at a convention approved by the Washington state medical or dental association or Washington progressive dental society;~~

~~(10) Students practicing or performing dental operations, under the supervision of competent instructors, in any reputable dental college;~~

~~(11))~~ The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: PROVIDED HOWEVER, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by ~~((him))~~ the person under ~~((other provisions of))~~ this chapter or chapters 18.29, 18.57, 18.71, and 18.88 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anaesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Sec. 14. Section 2, chapter 112, Laws of 1935 as last amended by section 50, chapter 279, Laws of 1984 and RCW 18.32.035 are each amended to read as follows:

There shall be a board of dental examiners consisting of nine practicing dentists, at least three of whom reside east of the summit of the Cascade range, and one consumer member, to be known as the Washington state board of dental examiners.

The members shall be appointed by the governor in the manner hereinafter set forth and at the time of their appointment upon said board must be actual residents of the state in active practice of dentistry ~~((or dental surgery as hereinafter))~~ as defined in this chapter and must have been for a period of five years or more legally licensed to practice dentistry ~~((or dental surgery))~~ in this state ~~((PROVIDED, HOWEVER, That)),~~ No person

~~((shall be))~~ is eligible to appointment to ~~((said))~~ the board who is in any way connected with or interested in any dental college or dental department of any institution of learning. Members shall be appointed to the board to serve for terms of five years from ~~((July 1))~~ January 1st of the year in which they are appointed, and shall hold office until their successors are appointed.

In case of a vacancy occurring on ~~((said))~~ the board, ~~((such))~~ the vacancy shall be filled by the governor as ~~((herein))~~ provided in this section for the remainder of the term of the vacancy and the appointee shall hold office until a successor is appointed.

The board ~~((shall have the power to employ))~~ may contract with competent persons on a temporary basis to assist in ~~((conducting))~~ developing or administering examinations for licensure.

The board ~~((shall have the authority to))~~ may enter into compacts and agreements with other states and with organizations formed by several states, for the purpose of conducting multi-state licensing examinations. The board may enter into such compacts and agreements even though they would result in the examination of a candidate for a license in this state by an examiner or examiners from another state or states, and even though ~~((they))~~ the compacts and agreements would result in the examination of a candidate or candidates for a license in another state or states by an examiner or examiners from this state.

The board of dental examiners may adopt rules in accordance with chapter 34.05 RCW to implement this chapter and chapter 18.130 RCW.

Sec. 15. Section 3, chapter 112, Laws of 1935 and RCW 18.32.037 are each amended to read as follows:

The board shall ~~((choose))~~ designate one of its members ~~((president))~~ as chairperson and one as secretary ~~((thereof)),~~ and it shall meet at least once in each year, and ~~((oftener))~~ more often if necessary, ~~((in))~~ at the discretion of the director or board, and at such times and places as ~~((he or it may))~~ the director or the board deems proper. A majority of the members of ~~((said))~~ the board ~~((shall, at all times,))~~ currently serving constitutes a quorum for the transaction of the business of the board ~~((and the proceedings thereof shall, at all reasonable times, be open to public inspection)).~~

Sec. 16. Section 5, chapter 112, Laws of 1935 as amended by section 2, chapter 38, Laws of 1979 and RCW 18.32.040 are each amended to read as follows:

~~((Said board shall make rules and regulations to establish a uniform and reasonable standard of educational requirements to be observed by dental schools, colleges, or dental departments of universities, and said board may determine the reputability of these by reference to their compliance with said rules or regulations:))~~

The board shall ~~((demand))~~ require that every applicant for a license to practice dentistry shall:

~~(1) ((Be a graduate or have fifteen units of high school work in acceptable subjects from a high or other secondary school approved by the board;~~

~~(2)) Present satisfactory evidence of ((completion of pre dental and dental education under one of the following plans:~~

~~(a) Completion of a minimum of thirty semester hours of collegiate credit in acceptable subjects from a college or university approved by the board, and graduation from a dental college, school, or dental department of an institution requiring four courses of instruction of at least eight months each, approved by the board;~~

~~(b) Completion of a minimum of sixty semester hours of collegiate credit in acceptable subjects from a college or university approved by the board, and graduation from a dental school, college, or dental department of an institution requiring three courses of at least eight months each, approved by the board;~~

~~(3)) graduation from a dental college, school, or dental department of an institution approved by the board;~~

~~(2) Submit, for the files of the board, a recent picture duly identified and attested((-)); and~~

~~((4) Pass an examination given by the board of dental examiners in the theory and practice of the science of dentistry. PROVIDED, That the board may recognize a certificate granted by the national board of dental examiners in lieu of, or subject to, such examination as may be required. PROVIDED FURTHER, That the board may recognize passage of an examination given by another state or states, or by an organization formed by several states, with which the board has entered into a formal compact or agreement for the purpose of conducting a multi-state license examination. PROVIDED, HOWEVER, That nothing in this chapter shall be construed to prevent any dental school which may desire to do so from establishing for admission a higher standard of preliminary education than specified in this chapter.)~~

(3) Pass an examination prepared or approved by and administered under the direction of the board. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the board determines. The board may accept, in lieu of all or part of a written examination, a certificate granted by a national or regional testing organization approved by the board. The board shall set the standards for passing the examination. The director of licensing shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the board or is exempted from disclosure under RCW 42.17.250 through 42.17.340.

***Sec. 17. Section 3, chapter 93, Laws of 1953 as last amended by section 30, chapter 287, Laws of 1984 and RCW 18.32.050 are each amended to read as follows:**

The members of the board shall each be compensated in accordance with RCW (~~43.03.240~~) 43.03.250 and shall be reimbursed for travel expenses incurred in attending the meetings of the board in accordance with RCW 43.03.050 and 43.03.060. Board members shall be compensated and reimbursed pursuant to this section for their activities in administering a multi-state licensing examination pursuant to the board's compact or agreement with another state or states or with organizations formed by several states: PROVIDED, That any compensation or reimbursement received by a board member from another state, or organization formed by several states, for such member's services in administering a multi-state licensing examination, shall be deposited in the health professions account of the state general fund.

***Sec. 17 was vetoed, see message at end of chapter.**

Sec. 18. Section 4, chapter 112, Laws of 1935 as last amended by section 28, chapter 52, Laws of 1957 and RCW 18.32.100 are each amended to read as follows:

The applicant for a dentistry license shall file an application on a form furnished by the director, (~~and therein state his~~) stating the applicant's name, age, place of residence, (~~citizenship~~) the name of the school or schools attended by (~~him~~) the applicant, the period of such attendance, the date of (~~his~~) the applicant's graduation, whether (~~he~~) the applicant has ever been (~~suspended or disbarred from~~) the subject of any disciplinary action related to the practice of dentistry, and shall include a statement of all of (~~his~~) the applicant's dental activities (~~for the previous five years~~). This shall include any other information deemed necessary by the board.

The application shall be signed by the applicant and sworn to by (~~him~~) the applicant before some person authorized to administer oaths, and shall be accompanied by (~~testimonials of his moral character, and~~) proof of (~~his~~) the applicant's school attendance and graduation.

(~~Said applicant at the time of making application must, in addition to other requisites, be a citizen of the United States or have first papers for naturalization.~~)

Sec. 19. Section 29, chapter 52, Laws of 1957 as last amended by section 23, chapter 7, Laws of 1985 and RCW 18.32.110 are each amended to read as follows:

Except as otherwise provided in RCW 18.32.210, (~~as now or hereafter amended~~) each applicant shall pay a fee determined by the director as provided in RCW 43.24.086, which shall accompany (~~his~~) the application(~~: PROVIDED, That applicants not licensed in another state and not~~

~~residents of this state for at least six consecutive months shall pay an additional investigation fee determined by the director as provided in RCW 43.24.086).~~

Sec. 20. Section 5, chapter 93, Laws of 1953 as last amended by section 24, chapter 7, Laws of 1985 and RCW 18.32.120 are each amended to read as follows:

When the application and the accompanying proof are found satisfactory, the director shall notify the applicant to appear before the board at a time and place to be fixed by the ~~((director, which time shall be not less than sixty days after the receipt of such application by the director.~~

~~Examination shall be made in writing in all theoretic subjects. Both theoretic and practical examinations shall be of a character to give a fair test of the qualifications of the applicant to practice dentistry or dental surgery)) board.~~

The examination papers, and all grading thereon, and the grading of the practical work, shall be ~~((deemed public documents, and))~~ preserved for a period of not less than ~~((three years))~~ one year after the board has made and published its decisions thereon. All examinations shall be conducted by the board under fair and wholly impartial methods.

Any applicant who fails to make the required grade ~~((in his first examination is entitled to take as many subsequent examinations as he desires upon the prepayment of a fee determined by the director as provided in RCW 43.24.086 for each subsequent examination. At least two examinations shall be given in each calendar year))~~ by his or her fourth examination may be reexamined only under rules adopted by the board.

Applicants for examination or reexamination shall pay a fee as determined by the director as provided in RCW 43.24.086.

Sec. 21. Section 17, chapter 112, Laws of 1935 as amended by section 3, chapter 130, Laws of 1951 and RCW 18.32.160 are each amended to read as follows:

All licenses issued by the director on behalf of the board shall be signed by ~~((him and by all members))~~ the director or chairperson and secretary of the board~~((; provided that all licenses issued to applicants who are not naturalized citizens of the United States shall be conditioned upon full citizenship being acquired within a period of six years from issuance of said licenses, and any holder failing to so qualify shall not be eligible for renewal of his license until full citizenship is acquired. This limitation shall not apply to dentists fully registered and licensed at the effective date of this act)).~~

Sec. 22. Section 24, chapter 112, Laws of 1935 as last amended by section 26, chapter 7, Laws of 1985 and RCW 18.32.180 are each amended to read as follows:

(1) Every person ((granted a license under this chapter shall pay to the director a license renewal)) licensed to practice dentistry in this state shall

register with the director of licensing, and pay a renewal registration fee determined by the director as provided in RCW 43.24.086 ((for the year commencing with the first day of October next following the issuance of his license, and annually thereafter. Payment must be made within thirty days following the commencement of the year for which the same accrues. The license renewal certificate issued by the director shall be indispensable evidence that the same has been made:

The failure of any licensed dentist to pay his annual license renewal fee by the first day of November following the date on which the fee was due shall work a forfeiture of his license. It shall not be)). Any failure to register and pay the renewal registration fee renders the license invalid, and the practice of dentistry shall not be permitted. The license shall be reinstated ((except)) upon written application to the director and ((the)) payment to the state of a penalty fee determined by the director as provided in RCW 43.24.086, together with all ((annual)) delinquent license renewal fees ((delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement)).

(2) A person who fails to renew the license for a period of three years may not renew the license under subsection (1) of this section. In order to obtain a license to practice dentistry in this state, such a person shall file an original application as provided for in this chapter, along with the requisite fees. The board, in its sole discretion, may permit the applicant to be licensed without examination, and with or without conditions, if it is satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of dentistry.

Sec. 23. Section 14, chapter 112, Laws of 1935 and RCW 18.32.220 are each amended to read as follows:

Anyone who is a ((legal and competent practitioner of dentistry or dental surgery)) licensed dentist in the state of Washington((, and of good moral character and known to the board of dental examiners of this state as such,)) who desires to change ((his or her)) residence to another state or territory, shall, upon application to the ((board of dental examiners)) director and payment of a fee as determined by the director under RCW 43.24.086, receive a certificate over the signature of the ((president and secretary of said board)) director or the director's designee, which shall attest to the facts ((above)) mentioned in this section, and giving the date upon which ((he was registered and)) the dentist was licensed.

Sec. 24. Section 37, chapter 5, Laws of 1977 ex. sess. as amended by section 39, chapter 259, Laws of 1986 and RCW 18.32.500 are each amended to read as follows:

RCW 18.32.510 through ((18.32.620)) 18.32.— (RCW 18.32.360 as recodified by this 1989 act) shall be known and may be cited as the "Dental Disciplinary Board Act".

Sec. 25. Section 2, chapter 5, Laws of 1977 ex. sess. as last amended by section 40, chapter 259, Laws of 1986 and RCW 18.32.520 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout RCW 18.32.510 through ~~((18.32.620))~~ 18.32.— (RCW 18.32.360 as recodified by this 1989 act).

(1) "Board" means the dental disciplinary board created in RCW 18.32.560.

(2) "License" means a certificate or license to practice dentistry in this state as provided for in this chapter.

(3) "Member" means member of the dental disciplinary board.

(4) "Secretary" means the secretary of the dental disciplinary board.

(5) "Director" means the director of licensing of the state of Washington.

(6) "To practice dentistry" means to engage in the practice of dentistry as defined in RCW 18.32.020.

Sec. 26. Section 3, chapter 5, Laws of 1977 ex. sess. as amended by section 41, chapter 259, Laws of 1986 and RCW 18.32.530 are each amended to read as follows:

In addition to those acts defined in chapter 18.130 RCW, the term "unprofessional conduct" as used in RCW 18.32.530 through ~~((18.32.620))~~ 18.32.— (RCW 18.32.360 as recodified by this 1989 act) includes gross, willful, or continued overcharging for professional services.

**Sec. 27. Section 10, chapter 5, Laws of 1977 ex. sess. as amended by section 31, chapter 287, Laws of 1984 and RCW 18.32.600 are each amended to read as follows:*

Members of the board shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.250 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 while engaged in business of the board.

**Sec. 27 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 28. A new section is added to chapter 18.32 RCW, to be codified between RCW 18.32.030 and 18.32.050, to read as follows:

A member of the board of dental examiners may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement showing the governor's reasons, with the order of removal. The secretary of state shall immediately send a certified copy of the order of removal and statement of causes by certified mail to the last known address of the member in question.

NEW SECTION. Sec. 29. A new section is added to chapter 18.29 RCW to read as follows:

An applicant holding a valid license and and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the director in consultation with the advisory committee determines that the other state's licensing standards are substantively equivalent to the standards in this state: PROVIDED, That the director in consultation with the advisory committee may require the applicant to: (1) File with the director documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the director deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the director a knowledge of Washington law pertaining to the practice of dental hygiene.

NEW SECTION. Sec. 30. A new section is added to chapter 18.32 RCW to read as follows:

An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the board determines that the other state's licensing standards are substantively equivalent to the standards in this state: PROVIDED, That the board may require the applicant to: (1) File with the board documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the board deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the board a knowledge of Washington law pertaining to the practice of dentistry.

NEW SECTION. Sec. 31. There is appropriated from the health professions account to the department of licensing for the biennium ending June 30, 1991, the sum of one hundred nineteen thousand nine hundred sixty-nine dollars, or as much thereof as may be necessary, to carry out the purposes of this act.

NEW SECTION. Sec. 32. The following sections are recodified within the dental disciplinary board act in chapter 18.32 RCW:

- (1) RCW 18.32.085;
- (2) RCW 18.32.290;
- (3) RCW 18.32.310;
- (4) RCW 18.32.320;
- (5) RCW 18.32.322;
- (6) RCW 18.32.324;
- (7) RCW 18.32.326;
- (8) RCW 18.32.328;
- (9) RCW 18.32.330;

- (10) RCW 18.32.340;
- (11) RCW 18.32.350; and
- (12) RCW 18.32.360.

NEW SECTION. Sec. 33. The following acts or parts of acts are each repealed:

(1) Section 28, chapter 16, Laws of 1923, section 1, chapter 47, Laws of 1969, section 21, chapter 292, Laws of 1971 ex. sess., section 24, chapter 30, Laws of 1975 1st ex. sess., section 30, chapter 158, Laws of 1979, section 19, chapter 7, Laws of 1985 and RCW 18.29.020;

(2) Section 14, chapter 168, Laws of 1983, section 29, chapter 287, Laws of 1984 and RCW 18.29.031;

(3) Section 33, chapter 16, Laws of 1923, section 3, chapter 47, Laws of 1969, section 25, chapter 30, Laws of 1975 1st ex. sess., section 20, chapter 7, Laws of 1985 and RCW 18.29.040;

(4) Section 32, chapter 16, Laws of 1923, section 5, chapter 47, Laws of 1969, section 26, chapter 30, Laws of 1975 1st ex. sess., section 33, chapter 158, Laws of 1979, section 22, chapter 7, Laws of 1985 and RCW 18.29.070;

(5) Section 21, chapter 112, Laws of 1935 and RCW 18.32.070;

(6) Section 13, chapter 112, Laws of 1935, section 4, chapter 49, Laws of 1969, section 32, chapter 30, Laws of 1975 1st ex. sess., section 27, chapter 7, Laws of 1985 and RCW 18.32.210; and

(7) Section 15, chapter 112, Laws of 1935, section 33, chapter 30, Laws of 1975 1st ex. sess., section 28, chapter 7, Laws of 1985 and RCW 18.32.225.

NEW SECTION. Sec. 34. Sections 1 through 11 of this act are each added to chapter 18.29 RCW.

Passed the House April 15, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 3, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 3, 1989.

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

"I am returning herewith, without my approval as to sections 17 and 27, Substitute House Bill No. 1894, entitled:

"AN ACT Relating to technical changes in chapter 18.29 and 18.32 RCW."

RCW 43.03.240 specifically designates all part-time boards which perform regulatory or licensing functions with respect to a specific profession, occupation, business, or industry as Class Three Groups for purposes of compensation. Members of boards classified as Class Three Groups receive up to \$50 for each day during which the member attends an official meeting or performs statutorily prescribed duties. Both the Board of Dental Examiners and the Dental Disciplinary Board are included in the definition of the part-time boards under RCW 43.03.240 which is the Class Three reimbursement and compensation statute.

Sections 17 and 27 of Substitute House Bill No. 1894 attempt to change the compensation of the Board of Dental Examiners and the Dental Disciplinary Board

by amending their respective practice acts to refer to RCW 43.03.250 which authorizes reimbursement of \$100 per day. Enactment of these two sections would clearly be in conflict with the statutory criteria contained in RCW 43.03.240 which says a Class Three Board "performs regulatory or licensing functions with respect to a specific profession". Both boards fit within their existing Class Three ranking. Additionally, the Office of Financial Management, pursuant to a statutory requirement, reviewed all part-time board's compensation and reported to the legislature in November 1988. This report is under consideration by the respective legislative committees.

With the exception of sections 17 and 27, Substitute House Bill No. 1894 is approved.*

CHAPTER 203

[Senate Bill No. 6076]

MOTORCYCLE ENDORSEMENT EXAMINATION AND RENEWAL FEES

AN ACT Relating to motorcycle public awareness campaign; amending RCW 46.20.505; adding a new section to chapter 46.20 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 46.20 RCW to read as follows:*

(1) Beginning July 1, 1989, the director of licensing shall develop a motorcycle public awareness program, provided funds are appropriated for this purpose. The director may contract with public and private entities for the operation of this program.

(2) There is created a motorcycle public awareness advisory board to assist the director of licensing in the development of a public awareness program. The board shall monitor this program following implementation and report to the director of licensing as necessary with recommendations including, but not limited to, administration, application, and substance of the public awareness program.

The board shall consist of nine members appointed by the director of licensing, one of whom shall be appointed chairperson. Three members of the board shall be members of nonprofit motorcycle organizations which actively support and promote motorcycle safety education. One member of the board shall represent motorcycle dealerships or motorcycle related shops. One member shall be a currently employed Washington state patrol motorcycle officer with at least five years experience and at least one year cumulative experience as a motorcycle officer. One member shall be a member of the public. One member shall be a current motorcycle safety instructor with no less than two years teaching experience. One member shall be the director of licensing or the director's designee. One member shall be a member of the legislative transportation committee or the committee's designee. The term of appointment shall be two years. The board shall meet at the call of the director, but not less than three times annually and not less than six times

during its term of appointment, and shall receive no compensation for services but shall be reimbursed for travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060.

(3) The board shall submit a proposed motorcycle public awareness program to the director and to the legislative transportation committee for review and approval on or before January 1, 1990.

(4) The purpose of the program is to increase public awareness of motorcycle safety.

*Sec. 1 was vetoed, see message at end of chapter.

Sec. 2. Section 50, chapter 145, Laws of 1967 ex. sess. as last amended by section 5, chapter 227, Laws of 1988 and RCW 46.20.505 are each amended to read as follows:

Every person applying for a special endorsement or a new category of endorsement of a driver's license authorizing such person to drive a motorcycle or a motor-driven cycle shall pay ~~((a motorcycle))~~ an examination fee of two dollars which is not refundable. ~~((The))~~ In addition, the endorsement fee for the initial or new category ((examination)) motorcycle endorsement shall be ((seven)) six dollars and the subsequent renewal ((examination)) endorsement fee shall be ((five)) seven dollars and fifty cents. ((Five dollars of)) The initial or new category ((examination fee and five dollars of any subsequent fee for a renewal)) and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund.

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

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 3, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 3, 1989.

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

"I am returning herewith, without my approval as to section 1, Engrossed Senate Bill No. 6076, entitled:

"AN ACT Relating to motorcycle public awareness."

Section 2 of this bill increases the examination and endorsement fees which fund the motorcycle safety education account. Section 3 contains an emergency clause making the increase effective immediately. Note the appropriation is not contained in this bill. I am supportive of this program and its intent to increase public safety for motorcyclists.

In 1983, a motorcycle safety education advisory committee was statutorily created to assist the Director of Licensing in the development of a motorcycle operator training program. In 1987, these statutes were revised to rename the committee as a board and to provide for selection criteria for members and a list of priorities for an education training program. The new board created in section 1 of this bill appears to

be duplicative of the existing board and incompatible in a number of areas. If the legislature desires a different composition of members or a different size board, then future legislation could make these changes in the existing board or abolish the existing board and create a new board.

Mandating new boards and commissions should be done only after careful consideration of their need. I have instructed the Director of Licensing to ensure the intent of Engrossed Senate Bill No. 6076 is carried out by the department.

With the exception of section 1, Engrossed Senate Bill No. 6076 is approved.*

CHAPTER 204

[Substitute Senate Bill No. 5144]

COUNTY AUDITORS—PRESERVATION, RECORDING, AND INDEXING OF DOCUMENTS

AN ACT Relating to the preservation of documents recorded or filed with county auditors; amending RCW 36.18.010; adding new sections to chapter 36.18 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature, finding in this centennial year that many old documents recorded or filed with county officials are deteriorating due to age and environmental degradation and that such documents require preservation in the public interest before they are irreparably damaged, enacts the centennial document preservation act of 1989.

NEW SECTION. Sec. 2. Each county auditor is hereby authorized to provide for the installation and thereafter for the maintenance of an improved system for copying, preserving, and indexing documents recorded in the county. Such a system may utilize the latest technology including, but not limited to, photomicrographic and computerized electronic digital storage methodology. The initial installation of the improved system shall include the following:

(1) The acquisition, installation, operation, and maintenance of the equipment provided for in the definition above; and

(2) The establishment of procedures for the continued preservation, indexing, and filing of all instruments and records that will, after the effective installation date, constitute a part of the improved system.

NEW SECTION. Sec. 3. A surcharge of two dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. Fifty percent of the revenue generated through this surcharge shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in section 5 of this act. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for the purpose authorized by this chapter and shall not be added to the county current expense

fund. Fifty percent of the revenue generated by this surcharge shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents. The portion of the surcharge transmitted to the state treasurer shall expire January 1, 1995, at which time the surcharge authorized in this section shall be reduced to one dollar per instrument.

The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation.

NEW SECTION. Sec. 4. The state treasurer may charge the fund for the actual costs of collecting, administering, and disbursing the funds but the charge shall not exceed one percent of the funds collected. The state treasurer shall invest funds while in the department's custody in accordance with existing laws and the interest earned will be added to the fund.

NEW SECTION. Sec. 5. After deduction of those costs of the state treasurer that are described under section 4 of this act, the balance of the funds will be distributed to the counties according to the following formula: One-half of the funds available shall be equally distributed among the thirty-nine counties; and the balance will be distributed among the counties in direct proportion to their population as it relates to the total state's population based on the most recent population statistics.

Sec. 6. Section 36.18.010, chapter 4, Laws of 1963 as last amended by section 1, chapter 230, Laws of 1987 and RCW 36.18.010 are each amended to read as follows:

County auditors shall collect the following fees for their official services:

For recording instruments, for the first page, legal size (eight and one-half by thirteen inches or less), five dollars; for each additional legal size page, one dollar;

For preparing and certifying copies, for the first legal size page, three dollars; for each additional legal size page, one dollar;

For preparing noncertified copies, for each legal size page, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund, which five-dollar fee shall expire June 30, 1988, plus an additional ten-dollar fee to be transmitted monthly to the state treasurer

and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records, not listed above, for first legal size page, five dollars; for each additional legal size page, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in section 3 of this act.

NEW SECTION. Sec. 7. Sections 2 through 5 of this act are each added to chapter 36.18 RCW.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 205

[Second Substitute Senate Bill No. 5400]

COUNTY-BASED MENTAL HEALTH SERVICES

AN ACT Relating to mental health systems; amending RCW 71.24.015, 71.24.025, 71.24.035, 71.24.045, 71.24.160, 71.05.020, and 71.05.170; reenacting and amending RCW 42.17.310; adding new sections to chapter 71.24 RCW; adding new sections to chapter 71.05 RCW; adding a new section to chapter 72.23 RCW; creating new sections; repealing RCW 71.24.039 and 71.05.540; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 2, chapter 204, Laws of 1982 as amended by section 1, chapter 274, Laws of 1986 and RCW 71.24.015 are each amended to read as follows:

It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide((s)) for:

(1) Access to mental health services for adults and children of the state who are acutely mentally ill, seriously disturbed, or chronically mentally ill, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. It is also the purpose of this chapter to ensure that children in need of mental health care and treatment receive the care and treatment appropriate to their developmental level, and to enable treatment decisions to be

made in response to clinical needs and in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of services through state-wide standards for ((man-
agement;)) monitoring((;)) and reporting of information;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill;

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which ((may)) shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers.

Sec. 2. Section 3, chapter 204, Laws of 1982 as amended by section 2, chapter 274, Laws of 1986 and RCW 71.24.025 are each amended to read as follows:

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the social security act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to section 5(1)(d) of this act.

(3) "Licensed service provider" means an entity licensed (~~by the department~~) according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.88 RCW.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill person" means a child or adult who has a mental disorder, in the case of a child as defined by chapter 71.34 RCW, and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years or, in the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements are related to a mental disorder, as defined in chapter 71.34 RCW, and where the placements progress toward a more restrictive setting. Placements by the department include but are not limited to placements by child protective services and child welfare services;

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year;

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended, and shall include school attendance in the case of a child; or

(d) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(6) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

(7) "Community support services" means services for acutely and chronically mentally ill persons and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill persons.

(8) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

~~((8))~~ (9) "Department" means the department of social and health services.

~~((9))~~ (10) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

~~((10))~~ (11) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), and ~~((12))~~ (15) of this section.

~~((11))~~ (12) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(13) "Residential services" means a facility or distinct part thereof which provides food~~((, clothing,))~~ and shelter, and may include ~~((day))~~ treatment services ~~((as defined in RCW 71.24.045, for acutely mentally ill; chronically mentally ill, or seriously disturbed persons as defined in this~~

section. Such facilities include, but are not limited to, ~~congregate care facilities providing mental health client services as stipulated by contract with the department beginning January 1, 1982~~)).

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill persons, or seriously disturbed persons determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes.

(14) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults and children, or seriously disturbed adults and children determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

~~((12))~~ (15) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to ~~((himself))~~ oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((13))~~ (16) "Secretary" means the secretary of social and health services.

~~((14))~~ (17) "State minimum standards" means: (a) Minimum requirements for ~~((management and))~~ delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to ~~((county administration;))~~ licensing service providers ~~((; information, accountability, contracts;))~~ and services; ~~((and))~~ (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter ~~((34.04))~~ 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service ~~((for those priority groups identified in RCW 71.24.035(5)(b)))~~; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

Sec. 3. Section 4, chapter 204, Laws of 1982 as last amended by section 1, chapter 105, Laws of 1987 and RCW 71.24.035 are each amended to read as follows:

- (1) The department is designated as the state mental health authority.
- (2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.
- (3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including ~~((children's))~~ representatives on any committee established to provide oversight to the state mental health program.
- (4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.
- (5) The secretary shall:
 - (a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) the chronically mentally ill; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Consultation and education services; and

(F) Community support services ~~((for acutely and chronically mentally ill persons which include: (I) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (H) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (HH) medication monitoring.));~~

(c) Develop and promulgate rules establishing state minimum standards for the ~~((management and))~~ delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) ~~((County administration))~~ Regional support networks; and

(iii) ~~((Information required to assure accountability of services delivered to the mentally ill; and~~

~~(iv))~~ Residential and inpatient services, ~~((if a county chooses to provide such optional services))~~ evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) ~~((Assure coordination of services consistent with state minimum standards for individuals who are released from a state hospital into the community to assure a continuum of care;~~

~~(e))~~ Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in ~~((subsection (5)(b) of))~~ this section;

~~((f))~~ (e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

~~((g))~~ (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

~~((h))~~ (g) Develop and maintain an information system to be used by the state ~~(and)~~, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;

~~((i))~~ (h) License service providers who meet state minimum standards;

~~((j)) Establish criteria to evaluate the performance of counties in administering mental health programs as established under this chapter. Evaluation of community mental health services shall include all categories of illnesses treated, all types of treatment given, the number of people treated, and costs related thereto; and~~

~~((k))~~ (i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, ~~((1982))~~ 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter ~~((34.04))~~ 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in ~~((chapter 71.24 RCW))~~ subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and ~~((human services))~~ health care and corrections committees of the senate and to the ways and means and human services committees of the house of representatives by ~~((January 1, 1988))~~ October 1, 1989. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults and children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1, 1993, shall submit their intentions by November 30, 1992, along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medic-aid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this 1989 act by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Study and report to the legislature by December 1, 1989, on expanding the use of federal Title XIX funds and the definition of institutions for mental diseases to provide services to persons who are acutely mentally ill, chronically mentally ill, or at risk of becoming so. The study shall also include an assessment of the impact of Title XIX funds and the definition of institutions for mental diseases on the use of state funds to provide needed mental health services to the chronically mentally ill.

(h) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(i) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(j) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(17) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(18) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990.

Sec. 4. Section 5, chapter 204, Laws of 1982 as amended by section 5, chapter 274, Laws of 1986 and RCW 71.24.045 are each amended to read as follows:

The county authority shall:

(1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, or seriously disturbed. The county program shall provide:

(a) Outpatient services;

(b) Emergency care services for twenty-four hours per day;

(c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social

skills, educational and prevocational services, day activities, and therapeutic treatment;

(d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;

(e) Consultation and education services;

(f) Residential and inpatient services, if the county chooses to provide such optional services; and

(g) Community support services ~~((for acutely and chronically mentally ill persons which include: (i) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (ii) sufficient contacts with clients, schools, families, or significant others to provide for an effective program of community maintenance; and (iii) medication monitoring)).~~

The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority;

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective. ~~((Whenever a county authority chooses to operate as a licensed service provider, the secretary shall act as the county authority for that service:))~~

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of ~~((management and))~~ service delivery as established by the department;

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in ~~((RCW 71.24.035(5)(b)))~~ this chapter;

(6) Maintain patient tracking information in a central location ~~((for the chronically mentally ill))~~ as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is equal to or greater than that of a county of the first class may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital.

NEW SECTION. Sec. 5. A new section is added to chapter 71.24 RCW to read as follows:

A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days

according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1991 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b) training staff in recognizing the relationship between mental illness and organic disease.

NEW SECTION. Sec. 6. A new section is added to chapter 71.24 RCW to read as follows:

The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that any enhanced program funding for implementation of chapter 71.05 RCW or this chapter, except for funds allocated for implementation of mandatory state-wide programs as required by federal statute, be made available primarily to those counties participating in regional support networks.

Sec. 7. Section 16, chapter 111, Laws of 1967 ex. sess. as amended by section 10, chapter 204, Laws of 1982 and RCW 71.24.160 are each amended to read as follows:

The county authority shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, (~~1982~~) 1990.

Sec. 8. Section 7, chapter 142, Laws of 1973 1st ex. sess. as amended by section 5, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.020 are each amended to read as follows:

For the purposes of this chapter:

(1) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her

actions and is not receiving such care as is essential for his or her health or safety;

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(3) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others;

(4) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(5) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(6) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(7) "Private agency" means any person, partnership, corporation, or association not defined as a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for the care and treatment of persons who are mentally ill;

(8) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(9) "Department" means the department of social and health services of the state of Washington;

(10) "Resource management services" has the meaning given in chapter 71.24 RCW;

(11) "Secretary" means the secretary of the department of social and health services, or his designee;

((++)) (12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

~~((12))~~ (13) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

~~((13))~~ (14) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association;

~~((14))~~ (15) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

~~((15))~~ (16) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent under rules and regulations adopted by the secretary;

~~((16))~~ (17) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: PROVIDED, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: PROVIDED FURTHER, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification: AND PROVIDED FURTHER, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter.

NEW SECTION. Sec. 9. A new section is added to chapter 71.05 RCW to read as follows:

The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to detain, commit, treat, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services.

Sec. 10. Section 22, chapter 142, Laws of 1973 1st ex. sess. as amended by section 10, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.170 are each amended to read as follows:

Whenever the designated county mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm to himself or others, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit or release such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the designated county mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW.

NEW SECTION. Sec. 11. As used in this chapter or chapter 71.24 or 10.77 RCW, the following words and phrases shall have the meanings indicated.

(1) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(2) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

NEW SECTION. Sec. 12. (1) Informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following information:

(a) The name of the individual, agency, or organization to which the disclosure is to be made;

(b) The name of the individual whose treatment record is being disclosed;

(c) The purpose or need for the disclosure;

(d) The specific type of information to be disclosed;

(e) The time period during which the consent is effective;

(f) The date on which the consent is signed; and

(g) The signature of the individual or person legally authorized to give consent for the individual.

(2) The files and records of court proceedings under chapter 71.05 RCW shall be closed but shall be accessible to any individual who is the

subject of a petition and to the individual's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services.

NEW SECTION. Sec. 13. (1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary.

The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Every person who is under the supervision of the department of corrections who receives evaluation or treatment under chapter 9.94A RCW shall be notified of the provisions of this section by the individual's corrections officer. Release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. In cases involving a person under supervision of the department of corrections, disclosure shall be made to the supervising corrections officer only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To a corrections officer of the department who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility.

(m) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management

services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

NEW SECTION. Sec. 14. (1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in sections 10 through 19 of this act.

NEW SECTION. Sec. 15. Each time written information is released from a treatment record, the record's custodian shall make a notation in the record including the following: The name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The patient shall have access to this release data.

NEW SECTION. Sec. 16. Nothing in this act shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients.

NEW SECTION. Sec. 17. Any person, including the state or any political subdivision of the state, violating sections 10 through 19 of this act shall be subject to the provisions of RCW 71.05.440.

NEW SECTION. Sec. 18. Any person who requests or obtains confidential information pursuant to sections 10 through 19 of this act under false pretenses shall be guilty of a gross misdemeanor.

NEW SECTION. Sec. 19. The department shall adopt rules to implement sections 10 through 18 of this act.

Sec. 20. Section 2, chapter 107, Laws of 1987, section 1, chapter 337, Laws of 1987, section 16, chapter 370, Laws of 1987, section 1, chapter 404, Laws of 1987 and section 10, chapter 411, Laws of 1987 and RCW 42.17.310 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients (~~(, prisoners, probationers, or parolees)~~).

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: **PROVIDED**, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: **PROVIDED, FURTHER**, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

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

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) Except as provided under section 2 of this 1987 act [1987 c 404 § 2], all applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 21. A new section is added to chapter 72.23 RCW to read as follows:

(1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs. Over the next six years, their involvement in providing short-term and acute care shall be diminished in accordance with the revised responsibilities for mental health care under chapter 71.24 RCW. The legislature finds that establishment of the eastern state hospital board, the western state hospital board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

(i) The director of the institute for the study and treatment of mental disorders established at the hospital;

(ii) One family member of a current or recent hospital resident;

(iii) One consumer of services;

(iv) One community mental health service provider;

(v) Two citizens with no financial or professional interest in mental health services;

(vi) One representative of the regional support network in which the hospital is located;

(vii) One representative from the staff who is a physician;

(viii) One representative from the nursing staff;

(ix) One representative from the other professional staff;

(x) One representative from the nonprofessional staff; and

(xi) One representative of a minority community.

(b) At least one representative listed in (a) (viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

(a) Monitor the operation and activities of the hospital;

(b) Review and advise on the hospital budget;

(c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;

(d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section;

(e) Report periodically to the governor and the legislature on the implementation of the legislative intent set forth in this section; and

(f) Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness program to retain qualified professionals at the state hospitals when the superintendent has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section.

(5) The department shall review the diagnoses and treatment history of hospital patients and create a plan to locate inappropriately placed persons into medicaid reimbursable nursing homes or other nonhospital settings. The plan shall be submitted to the legislature by June 30, 1990.

NEW SECTION. Sec. 22. The department of health, if created, or the office of financial management shall conduct a study of equitable and timely compensation for involuntary psychiatric services through a review of medical assistance rates paid to hospitals. The department, or office of financial management, shall submit a report and recommendations to the department of social and health services and appropriate legislative committees by December 1, 1989.

NEW SECTION. Sec. 23. (1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of the transition to regional systems of care. The legislative budget committee shall prepare a plan to conduct a study of the effectiveness of the change in the mental health system initiated by this act. The primary goal of the study is to evaluate the progress of the regional support networks in meeting the statutory requirement of this act to serve at least eighty-five percent of the

short-term commitments within their boundaries by July 1, 1993. A plan for study shall include, but is not limited to, the following considerations:

(a) Progress in implementing and complying with the intention of this act to create regional support networks;

(b) Effect on short-term commitments to the state hospitals;

(c) Effect on residential options in the community;

(d) Effect on delivery of services, both residential and nonresidential, in the community; and

(e) Effect on continuity of services to the mentally ill.

(2) The plan for conducting a study, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates is to be provided to the appropriate policy and fiscal committees of the house of representatives and the senate by December 1, 1990. The plan may include proposals to use contract evaluators or other options for determining the most appropriate entity to complete the study, and shall identify ways to measure program progress and outcomes. The plan shall take into consideration a study completion date of December 1, 1992.

(3) In order to establish a beginning point for any future study of the effectiveness of the system changes initiated in this act, when the biennial contract is signed by the department of social and health services and a regional support network, the department shall forward a copy of the contract to the legislative budget committee.

NEW SECTION. Sec. 24. Sections 10 through 19 of this act shall take effect on July 1, 1995, or when regional support networks are established.

NEW SECTION. Sec. 25. Sections 10 through 19 of this act are each added to chapter 71.05 RCW.

NEW SECTION. Sec. 26. The following acts or parts of acts are each repealed:

(1) Section 4, chapter 274, Laws of 1986 and RCW 71.24.039; and

(2) Section 59, chapter 142, Laws of 1973 1st ex. sess. and RCW 71-.05.540.

NEW SECTION. Sec. 27. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 28. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 23, 1989.

Passed the House April 23, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 206

[House Bill No. 1980]

SCHOOL AND EDUCATIONAL SERVICE DISTRICTS—JOB SHARING

AN ACT Relating to job sharing in school and educational service districts; and adding a new section to chapter 28A.58 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.58 RCW to read as follows:

In filling a position, school and educational service districts shall consider applications from two individuals wishing to share a job. All announcements of job openings shall contain a statement indicating the district will accept applications from individuals wishing to share the position. Job sharing shall be available to certificated staff.

Passed the House April 15, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 207

[Substitute House Bill No. 1857]

PUBLIC WATER SUPPLY SYSTEMS—HEALTH STANDARDS—BOARD OF HEALTH RULES

AN ACT Relating to public water systems; amending RCW 43.20.050, 80.04.110, 80.04.180, 80.28.030, and 80.28.040; and adding a new section to chapter 80.28 RCW.

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

Sec. 1. Section 43.20.050, chapter 8, Laws of 1965 as last amended by section 1, chapter 213, Laws of 1985 and RCW 43.20.050 are each amended to read as follows:

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is empowered to hold hearings and explore ways to improve the health status of the citizenry.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules and regulations (~~for the protection of water supplies for domestic use, and such other uses as may affect the public health, and~~

~~shall adopt standards and procedures governing the design, construction and operation of water supply, treatment, storage, and distribution facilities, as well as the quality of water delivered to the ultimate consumer;)) necessary to assure safe and reliable public drinking water and to protect the public health. Such rules and regulations shall establish requirements regarding:~~

~~(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;~~

~~(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;~~

~~(iii) Public water system management and reporting requirements;~~

~~(iv) Public water system planning and emergency response requirements;~~

~~(v) Public water system operation and maintenance requirements; and~~

~~(vi) Water quality, reliability, and management of existing but inadequate public water systems.~~

(b) Adopt rules and regulations and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;

(c) Adopt rules and regulations controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including but not limited to food service establishments, schools, institutions, recreational facilities and transient accommodations and in places of work;

(d) Adopt rules and regulations for the imposition and use of isolation and quarantine; and

(e) Adopt rules and regulations for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules and regulations governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule.

(3) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules and regulations adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

Sec. 2. Section 80.04.110, chapter 14, Laws of 1961 as amended by section 11, chapter 450, Laws of 1985 and RCW 80.04.110 are each amended to read as follows:

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly

set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission.

The commission shall, as appropriate, exercise auditing and accounting supervision or initiate a complaint upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapter 70.116 RCW.

Sec. 3. Section 82.04.180, chapter 14, Laws of 1961 and RCW 80.04-.180 are each amended to read as follows:

(1) The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

(2) No order so restraining or suspending an order of the commission relating to rates, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing(~~(, and)~~). If a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage. A water company seeking a supersedeas must demonstrate to the court that it is in compliance with the state board of health standards adopted pursuant to RCW 43.20.050 and chapter 70.116 RCW relating to the purity, volume, and pressure of water.

(3) In case the order of the commission under review is superseded by the court, it shall require a bond, with good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transmission or service any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporations would have been compelled to pay if the order of the commission had not been suspended.

(4) The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem proper.

Sec. 4. Section 80.28.030, chapter 14, Laws of 1961 and RCW 80.28-.030 are each amended to read as follows:

Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, quality, volume, and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure shall be prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission in a timely fashion, the commission may request that the department petition the court to place the company in receivership.

Sec. 5. Section 80.28.040, chapter 14, Laws of 1961 and RCW 80.28-.040 are each amended to read as follows:

Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.

In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the court to place the company in receivership.

NEW SECTION. Sec. 6. A new section is added to chapter 80.28 RCW to read as follows:

The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county.

Passed the House March 14, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 208

[Senate Bill No. 5737]

EDUCATIONAL SERVICE DISTRICTS—LEAVE POLICIES

AN ACT Relating to educational service districts; and adding a new section to chapter 28A.21 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.21 RCW 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 noncertification 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 noncertificated 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 noncertificated 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 the effective date of this act, 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.21.360, 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, and the office of the superintendent of public instruction, and from any such district or office to another such district or office. 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 the effective date of this act under the administrative practices of an educational service district, and such leave transferred before the effective date of this act 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 the effective date of this act.

Passed the Senate March 15, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 209

[Senate Bill No. 5738]

STUDENT MOTIVATION, RETENTION, AND RETRIEVAL PROGRAMS

AN ACT Relating to the development of student motivation, retention, and retrieval programs; amending RCW 28A.120.062 and 28A.120.064; and repealing RCW 28A.120.066.

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

Sec. 1. Section 214, chapter 518, Laws of 1987 and RCW 28A.120.062 are each amended to read as follows:

(1) The superintendent of public instruction is authorized and shall grant funds to selected school districts to assist in the development of student motivation, retention, and retrieval programs for youth who are at risk of dropping out of school or who have dropped out of school. The purpose of

the state assistance for such school district programs is to provide districts the necessary ~~((start-up))~~ money which will encourage the development by districts or cooperatives of districts of integrated programs for students who are at risk of dropping out of school or who have dropped out of school.

(2) Funds as may be appropriated for the purposes of this section and RCW 28A.120.064 through 28A.120.072 shall be distributed to qualifying school districts for initial planning, development, and implementation of educational programs designed to motivate, retain, and retrieve students.

(3) Funds shall be distributed among qualifying school districts on a per pupil basis~~((:))~~ in accordance with the following state funding formula: To determine the per pupil allocation, the ~~((total))~~ appropriation for this ~~((program))~~ purpose shall be divided by the total full-time equivalent student population of all qualifying districts as determined on October 1 ((; 1987)) of the first year of each biennium. The resulting dollar amount shall be multiplied by the current school year October 1 total full-time equivalent student population of each qualifying school district to determine the maximum grant that each qualifying school district is eligible to receive. No district may receive more than is necessary for planning and implementation activities outlined in the district's grant application.

(4) The eligibility of a school district or cooperative of school districts to receive program implementation funds shall be determined once every two years.

(5) Should one or more eligible school districts not request funds available under subsection (3) of this section, the funds may be expended or allocated to other qualifying school districts on a nonformula grant basis by the superintendent of public instruction for the purpose of furthering student motivation, retention, and retrieval programs.

Sec. 2. Section 215, chapter 518, Laws of 1987 and RCW 28A.120.064 are each amended to read as follows:

(1) In distributing grant funds, the superintendent of public instruction shall first award funds to each school district with a dropout rate which, as determined by the superintendent of public instruction, is over time in the top twenty-five percent of all districts' dropout rates. ~~((The superintendent shall give priority consideration among such qualifying districts to granting funds to those districts where no student motivation, retention, and retrieval programs currently exist.))~~

(2) The superintendent may grant funds to a cooperative of districts which may include one district, or more, whose dropout rate is not in the top twenty-five percent of all districts' dropout rates.

(3) The sum of all grants awarded pursuant to RCW 28A.120.062 through 28A.120.072 for a particular biennium shall not exceed the amount appropriated by the legislature for such purposes.

NEW SECTION. Sec. 3. Section 216, chapter 518, Laws of 1987 and RCW 28A.120.066 are each repealed.

Passed the Senate March 14, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 210

[House Bill No. 1664]

MOTOR VEHICLES—WINDOWS AND WINDSHIELDS—TINTING AND COLORING RESTRICTIONS

AN ACT Relating to the tinting or coloring of windows and windshields of motor vehicles; amending RCW 46.37.430; and prescribing penalties.

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

Sec. 1. Section 46.37.430, chapter 12, Laws of 1961 as last amended by section 723, chapter 330, Laws of 1987 and RCW 46.37.430 are each amended to read as follows:

(1) 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 approved by the state patrol wherever glazing material is used in doors, windows, and windshields. 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.

(2) The term "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 shall suspend the registration of any motor vehicle so subject to this section which he 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 wherever glazing materials are used in outside windows and doors.

(5) No tinting or coloring material that reduces light transmittance to any degree(~~(, unless it meets standards for such material adopted by the state patrol;))~~) may be applied to the surface of the safety glazing material in a motor vehicle ~~((in any of the following locations:~~

~~(a) Windshields;~~

~~(b) Windows to the immediate right and left of the driver including windings or;~~

~~(c) Rearmost windows if used for driving visibility by means of an interior rear-view mirror.~~

~~The standards adopted by the state patrol shall permit a greater degree of light reduction on a vehicle operated by or carrying as a passenger a person who possesses written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons)) unless it meets the following standards for such material:~~

~~(a) The maximum level of film sunscreening material to be applied to windshields and any windows shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured in conjunction with the safety glazing material.~~

~~(b) This section shall permit a greater degree of light reduction on all windows 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. The application of sunscreening material is restricted to the top six-inch area of a vehicle's windshield.~~

~~(d) If sunscreening material is applied to the rearview window, 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) The following types of colors of sunscreening material are not permitted:~~

~~(i) Mirror finish products;~~

~~(ii) Red, gold, yellow, or black material; or~~

~~(iii) Sunscreening material that is in liquid preapplication form and brushed or sprayed on.~~

Nothing in this ~~((subsection))~~ section prohibits 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 the standards of the state patrol for such safety glazing materials.

(6) ~~((The standards used for approval of safety glazing materials by the state patrol shall conform as closely as possible to the standards for~~

~~safety glazing materials for motor vehicles promulgated by the United States of America Standards Institute in effect at the time of manufacture of the safety glazing material)) It is a misdemeanor for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with tinting or coloring material in violation of this section.~~

(7) Limousines and passenger buses used to transport persons for compensation are exempt from the requirements of this section.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 211

[Substitute House Bill No. 1952]

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

AN ACT Relating to durable power of attorney; amending RCW 11.94.010; and adding new sections to chapter 11.94 RCW.

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

Sec. 1. Section 25, chapter 30, Laws of 1985 and RCW 11.94.010 are each amended to read as follows:

(1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the

guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility where the principal resides or receives care. This authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.040 (3)(a) through (d).

NEW SECTION. Sec. 2. A new section is added to chapter 11.94 RCW to read as follows:

The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order.

NEW SECTION. Sec. 3. A new section is added to chapter 11.94 RCW to read as follows:

(1) A durable power of attorney executed pursuant to chapter 11.94 RCW before the effective date of this section that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in section 1(3) of this act.

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before the effective date of this section.

Passed the House March 15, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 212

[Substitute House Bill No. 1858]

LENDING INSTITUTIONS—FEDERAL SMALL BUSINESS LOAN GUARANTY PROGRAM—AUTHORIZATION TO PARTICIPATE

AN ACT Relating to the use of federal loan funds; adding a new chapter to Title 31 RCW; creating a new section; prescribing penalties; and making an appropriation.

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

NEW SECTION. Sec. 1. The legislature finds and declares that small and moderate-size companies can enhance their access to working capital and to capital for acquiring and equipping commercial and industrial facilities by using the United States small business administration national small business loan program known as the 7(a) loan guaranty program. The 7(a) loan guaranty program provides financing to small firms needing working capital and longer term financing for equipment and other fixed assets. Such loans can be made to small businesses by nondepository lenders and guaranteed by the small business administration only if the state provides for the on-going regulation and examination of such entities.

It is the intent of the legislature that the supervisor of banking license, regulate, and subject to on-going examination, nondepository lenders for the purpose of allowing such lenders to participate in the small business administration's 7(a) loan guaranty program.

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

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) "Supervisor" means the state supervisor of banking.

NEW SECTION. Sec. 3. (1) The supervisor shall administer this chapter. The supervisor may issue orders and adopt rules that, in the opinion of the supervisor, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) Whenever the supervisor issues an order or a license under this chapter, the supervisor may impose conditions that are necessary, in the opinion of the supervisor, to carry out the purposes of this chapter.

(3) An application filed with the supervisor under this chapter shall be in such a form and contain such information as the supervisor may require.

(4) Any change of control of a licensee shall be subject to the approval of the supervisor. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of a licensee or the power to elect or control the election of a majority of the board of directors of the licensee.

NEW SECTION. Sec. 4. (1) A licensee may participate in the 7(a) loan guaranty program of the small business administration pursuant to section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms. If a licensee participates in a

program referred to in this section, the licensee shall comply with the requirements of that program.

(2) A licensee may be incorporated under either the Washington business corporation act or the Washington nonprofit corporation act. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all the powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter.

NEW SECTION. Sec. 5. After a review of information regarding the directors, officers, and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of such additional information as is considered relevant by the supervisor, the supervisor shall approve an application for a license if, and only if, the supervisor determines that:

(1) The applicant is capitalized in an amount that is not less than five hundred thousand dollars and that such sum is adequate for the applicant to transact business as a nondepository 7(a) lender and that in evaluating the capital position of the applicant the supervisor may consider and include the net worth of any corporate shareholder of the applicant corporation if the shareholder guarantees the liabilities of the applicant: **PROVIDED**, That such corporate shareholder be subject to the reporting requirements of section 8 of this act;

(2) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; that the directors and officers of the applicant are competent to perform their functions with respect to the applicant; and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository 7(a) lender;

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purposes of this chapter; and

(4) The proposed activity possesses a reasonable prospect for success.

NEW SECTION. Sec. 6. (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate, or with another licensee, a licensee shall not hold control of a business firm to which it has made a loan under section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), except that, to the extent necessary to protect the licensee's interest as creditor of the business firm, a licensee that provides financing assistance to a business firm may acquire and hold control of that business firm. Unless the supervisor approves a longer period, a licensee holding control of a business firm under this section shall divest itself of the interest which constitutes holding control as soon as practicable or within five years after acquiring that interest, whichever is sooner.

(2) For the purposes of subsection (1) of this section, "hold control" means alone or in concert with others:

(a) Ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(i) For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty percent of the outstanding voting securities;

(ii) For a business firm with outstanding voting securities held by fifty or more shareholders, twenty-five percent of the outstanding voting securities;

(b) Being able to elect or control the election of a majority of the board of directors.

NEW SECTION. Sec. 7. (1) The supervisor is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the supervisor of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the supervisor shall be paid at the time the application is filed with the supervisor.

(3) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW 43.19.095.

NEW SECTION. Sec. 8. (1) A licensee shall keep books, accounts, and other records in such a form and manner as the supervisor may require. These records shall be kept at such a place and shall be preserved for such a length of time as the supervisor may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the supervisor, a licensee shall file with the supervisor a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts and the statement of changes in financial position; and

(b) Other information that the supervisor may require.

(3) Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses which are not guaranteed by the United States government or any agency thereof.

NEW SECTION. Sec. 9. (1) The supervisor shall examine each licensee not less than once each year.

(2) The supervisor may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the supervisor or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the supervisor's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the supervisor may retain any certified public accountant, attorney, appraiser, or other person to assist the supervisor. The licensee being examined shall pay the fees of a person retained by the supervisor under this subsection.

NEW SECTION. Sec. 10. If the supervisor denies an application, the supervisor shall provide the applicant with a written statement explaining the basis for the denial.

NEW SECTION. Sec. 11. (1) The supervisor shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

- (a) Disclosure of conflicts of interest;
- (b) Prohibition of false statements made to the supervisor on any form required by the supervisor or during any examination requested by the supervisor; or
- (c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the supervisor adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the supervisor, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the bank examination fund.

NEW SECTION. Sec. 12. If, in the opinion of the supervisor, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this chapter or any rule adopted under this chapter, the supervisor may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets.

NEW SECTION. Sec. 13. The supervisor may deny, suspend, or revoke a license if the applicant or holder violates any provision of this chapter or any rules promulgated pursuant to this chapter.

NEW SECTION. Sec. 14. Nothing in section 7 of this act shall be construed to prevent repayment to the general fund of the twenty-five thousand dollar start-up appropriation set forth in section 15 of this act.

NEW SECTION. Sec. 15. The sum of twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the bank examination fund for the regulatory purposes of this act.

NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the small business administration, is contrary to the intent and purposes of the 7(a) loan guaranty program, the supervisor shall not enforce such provision but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected.

NEW SECTION. Sec. 17. Sections 1 through 13 of this act shall constitute a new chapter in Title 31 RCW.

Passed the House March 13, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 213

[House Bill No. 2037]

MT. ST. HELENS RECOVERY OPERATIONS—EXTENSION JUNE 30, 1995

AN ACT Relating to Mt. St. Helens recovery operations; and amending RCW 43.21A-.500, 43.21C.500, 75.20.300, 79.90.160, 89.16.500, and 90.58.500.

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

Sec. 1. Section 7, chapter 7, Laws of 1982 as last amended by section 3, chapter 307, Laws of 1985 and RCW 43.21A.500 are each amended to read as follows:

Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210, other than the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers, may be exempted by the applicable county legislative authority from the requirements related to water and flood control under the department of ecology, for operations within such county: **PROVIDED**, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology.

This section shall expire on June 30, (~~1990~~) 1995.

Sec. 2. Section 5, chapter 7, Laws of 1982 as last amended by section 4, chapter 307, Laws of 1985 and RCW 43.21C.500 are each amended to read as follows:

Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210, other than the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers, may be exempted by the applicable county legislative authority from the requirements of the State Environmental Policy Act of 1971, chapter 43.21C RCW, for operations within such county: PROVIDED, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology. The county shall comply with all substantive objectives of this chapter and shall consult with the department of ecology in the planning process.

This section shall expire on June 30, ((+990)) 1995.

Sec. 3. Section 8, chapter 7, Laws of 1982 as last amended by section 38, chapter 36, Laws of 1988 and RCW 75.20.300 are each amended to read as follows:

(1) The legislature intends to expedite flood-control, acquisition of sites for sediment retention, and dredging operations in those rivers affected by the May 1980 eruption of Mt. St. Helens, while continuing to protect the fish resources of these rivers.

(2) The director of fisheries and director of wildlife shall process hydraulic project applications submitted under RCW 75.20.100 within fifteen working days of receipt of the application. This requirement is only applicable to flood control and dredging projects located in the Cowlitz river from mile 22 to the confluence with the Columbia, and in the Toutle river from the mouth to the North Fork Toutle sediment dam site at North Fork mile 12, and to river mile 3 on the South Fork Toutle river, and volcano-affected areas of the Columbia river.

(3) For the purposes of this section, the emergency provisions of RCW 75.20.100 may be initiated by the county legislative authority if the project is necessary to protect human life or property from flood hazards, including:

(a) Flood fight measures necessary to provide protection during a flood event; or

(b) Measures necessary to reduce or eliminate a potential flood threat when other alternative measures are not available or cannot be completed prior to the expected flood threat season; or

(c) Measures which must be initiated and completed within an immediate period of time and for which processing of the request through normal methods would cause a delay to the project and such delay would significantly increase the potential for damages from a flood event.

(4) This section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers.

(5) This section expires on June 30, (~~(1990)~~) 1995.

Sec. 4. Section 22, chapter 21, Laws of 1982 1st ex. sess as last amended by section 7, chapter 307, Laws of 1985 and RCW 79.90.160 are each amended to read as follows:

The legislature finds and declares that, due to the extraordinary volume of material washed down onto state-owned beds and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent privately owned property in such areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent private lands during the years 1980 through December 31, (~~(1990)~~) 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of such lands without the necessity of any charge by the department of natural resources and free and clear of any interest of the department of natural resources of the state of Washington.

Sec. 5. Section 6, chapter 7, Laws of 1982 as last amended by section 8, chapter 307, Laws of 1985 and RCW 89.16.500 are each amended to read as follows:

Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210, other than the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers, may be exempted by the applicable county legislative authority from the requirements related to diking and drainage under the department of ecology, for operations within such county: PROVIDED, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology.

This section shall expire on June 30, (~~(1990)~~) 1995.

Sec. 6. Section 4, chapter 7, Laws of 1982 as last amended by section 9, chapter 307, Laws of 1985 and RCW 90.58.500 are each amended to read as follows:

Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210 may be exempted by the applicable county legislative authority from the requirements of the

Shoreline Management Act of 1971, chapter 90.58 RCW, for operations within such county: PROVIDED, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology. The county shall comply with all substantive objectives of this chapter and shall consult with the department of ecology in the planning process.

The sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers is exempt from the substantial development permit requirement under RCW 90.58.030(3)(e).

This section shall expire on June 30, ((1990)) 1995.

Passed the House March 15, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 214

[House Bill No. 1342]

POST SENTENCE PETITIONS—DEPARTMENT OF CORRECTIONS MAY SEEK REVIEW

AN ACT Relating to post sentence petitions; and amending RCW 9.94A.210 and 9.94A.260.

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

Sec. 1. Section 21, chapter 137, Laws of 1981 as last amended by section 13, chapter 209, Laws of 1984 and RCW 9.94A.210 are each amended to read as follows:

(1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

Sec. 2. Section 26, chapter 137, Laws of 1981 and RCW 9.94A.260 are each amended to read as follows:

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.

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.

Passed the House February 27, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 215

[Substitute House Bill No. 1572]

ELECTIONS—NOMINATIONS—MINOR PARTIES AND INDEPENDENT CANDIDATES

AN ACT Relating to nominations by minor parties and independent candidates; amending RCW 29.24.020, 29.24.030, 29.24.040, 29.24.060, and 29.24.070; adding new sections to chapter 29.24 RCW; and repealing RCW 29.24.050, 29.24.075, and 29.24.090.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.24 RCW to read as follows:

Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention.

Sec. 2. Section 29.24.020, chapter 9, Laws of 1965 as amended by section 2, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.020 are each amended to read as follows:

Any nomination of a candidate for partisan public office by other than a major political party shall only be made either: (1) In a convention held ~~((on the last Saturday immediately preceding the first day for filing declarations of candidacy specified in RCW 29.18.030))~~ not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29.68.080 ((or 29.68.090)); or (2) as provided by RCW 29.51.170. A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice-president, United States senator, or a state-wide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29.24.030. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention.

Sec. 3. Section 29.24.030, chapter 9, Laws of 1965 as amended by section 3, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.030 are each amended to read as follows:

(1) To be valid, a convention must~~((~~ be attended by at least ((a number of individuals who are registered to vote in the election jurisdiction for which nominations are to be made, which number is equal to one for each ten thousand voters or portion thereof who voted in the last preceding presidential election held in that election jurisdiction or twenty-five such registered voters, whichever number is greater;)) twenty-five registered voters.

(2) ~~((Have been called by a notice published in a newspaper of general circulation published in the county in which the convention is to be held at least ten days before the date of the convention stating the date, hour, and place of meeting. The notice shall also include the mailing address of the~~

person or organization sponsoring the convention, if any)) In order to nominate candidates for the offices of president and vice-president of the United States, United States senator, or any state-wide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made.

Sec. 4. Section 29.24.040, chapter 9, Laws of 1965 as amended by section 4, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.040 are each amended to read as follows:

A certificate evidencing nominations made at a convention must:

(1) Be in writing;

(2) Contain the name of each person nominated, his residence, and the office for which he is named (~~(; together with a sworn statement of each nominee giving his consent to the said nominations)), and if the nomination is for the offices of president and vice-president of the United States, a sworn statement from both nominees giving their consent to the nomination;~~

(3) (~~Designate in not more than five words the purpose for which the convention was held or the new or minor political party, organization, or principle which the convention represents)) Identify the minor political party or the independent candidate on whose behalf the convention was held;~~

(4) Be verified by the oath of the presiding officer and secretary;

(5) Be (~~signed by at least a number of individuals who are registered to vote in the election jurisdiction for which the nominations are made and who attended the convention, which number is equal to the number of registered voters who must have attended the convention for it to be valid under RCW 29.24.030 as now or hereafter amended;~~

~~(6) Show the voting addresses of all signers)) accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29.24.030;~~

~~((7)) (6) Contain proof of publication of the notice of calling the convention; and~~

~~((8)) (7) Be submitted to the ((secretary of state not later than the last day for filing declarations of candidacy under RCW 29.18.030, or fixed in accordance with RCW 29.68.080 or 29.68.090)) appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices~~

whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state.

NEW SECTION. Sec. 5. A new section is added to chapter 29.24 RCW to read as follows:

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW 29.24.030(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election.

NEW SECTION. Sec. 6. A new section is added to chapter 29.24 RCW to read as follows:

A minor political party or independent candidate convention nominating candidates for the offices of president and vice-president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention.

Sec. 7. Section 29.24.060, chapter 9, Laws of 1965 as amended by section 6, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.060 are each amended to read as follows:

~~Upon the receipt of the certificate of nomination ((of a convention, the secretary of state shall check the certificate and canvass the signatures thereon to ascertain if the requirements of RCW 29.24.040, as now or hereafter amended, have been met. If the secretary of state finds that the certificate does not comply with law he shall refuse to file the same and any declarations of candidacy of candidates nominated by such convention. Within two weeks after the last day of the filing period, as specified by RCW 29.18.030, or fixed in accordance with RCW 29.68.080 or 29.68.090, the secretary of state shall notify the presiding officer and secretary of each convention of any signatures judged invalid, together with the reason for any such judgment. Within one week after such notification, upon request of the presiding officer or secretary of any such convention, the county auditor shall recheck the voter registration records and shall notify the secretary of state of any signatures validated upon rechecking.~~

~~On the seventh day after filing a nominating certificate or notifying the presiding officer or secretary of a convention of any signatures judged invalid on a nominating certificate, the secretary of state shall destroy the portion of the certificate which contains the signatures, names, and addresses of convention participants unless the certificate is in dispute, in~~

~~which case that portion shall be retained until the dispute is resolved. Upon resolution of any such dispute, the secretary of state shall destroy that portion of the nominating certificate. In no case shall the fact that a voter participated in a particular convention be disclosed to any person other than the election official who checks the validity of signatures on nominating certificates)), the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29.24.030 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying.~~

Sec. 8. Section 29.24.070, chapter 9, Laws of 1965 as amended by section 7, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.070 are each amended to read as follows:

~~((If a nominating certificate is valid, each candidate, except for the positions of president or vice president, whose nomination is evidenced thereby may file with the secretary of state a declaration of candidacy in the form prescribed for candidates subject to primary election, and each candidate must at the time of filing such declaration pay to the secretary of state the fee prescribed by law for candidates subject to primary election.))~~ Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice-president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29.18.030 and 29.18.040. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he pays the fee required by law to be paid by candidates for the same office to be nominated at a primary.

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) Section 29.24.050, chapter 9, Laws of 1965, section 5, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.050;

(2) Section 8, chapter 329, Laws of 1977 ex. sess. and RCW 29.24.075; and

(3) Section 29.24.090, chapter 9, Laws of 1965 and RCW 29.24.090.

Passed the House March 8, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 216

[House Bill No. 1844]

HOUSE-TO-HOUSE SALES—REGISTRATION OF EMPLOYERS USING MINOR SALES PERSONS

AN ACT Relating to employment in house-to-house sales; adding new sections to chapter 49.12 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) No person under sixteen years of age may be employed in house-to-house sales unless the department grants a variance permitting specific employment under criteria adopted by department rule.

(2) No person sixteen or seventeen years of age may be employed in house-to-house sales unless the employer:

(a) Obtains and maintains a validated registration certificate issued by the department. Application for registration shall be made on a form prescribed by the director, which shall include but not be limited to:

(i) The employer's name, permanent address, and telephone number;

(ii) The employer's social security number and industrial insurance number or, in lieu of these numbers, the employer's unified business identifier account number; and

(iii) A description of the work to be performed by persons aged sixteen or seventeen and the working conditions under which the work will be performed;

(b) Provides each employee sixteen or seventeen years of age, before beginning work, an identification card in a form prescribed by the director. The card shall include, but not be limited to, a picture of the employee, the employee's name, the name and address of the employer, a statement that the employer is registered with the department of labor and industries, and the registration number. The person employed in house-to-house sales shall show the identification card to each customer or potential customer of the person;

(c) Ensures supervision by a person aged twenty-one years or over during all working hours, with each supervisor responsible for no more than five persons; and

(d) If transporting an employee sixteen or seventeen years of age to another state, obtains the express written consent of the employee's parent or legal guardian.

(3) An employer may not employ a person sixteen or seventeen years of age in house-to-house sales after the hour of nine p.m.

(4) The department shall adopt by rule procedures for the renewal, denial, or revocation of registrations required by this section.

NEW SECTION. Sec. 2. (1) Any person advertising to employ a person in house-to-house sales with an advertisement specifically prescribing a minimum age requirement that is under the age of twenty-one shall:

(a) Register with the department as provided in section 1(2)(a) of this act; and

(b) Include the following information in any advertisement:

(i) The registration number required by subsection (1)(a) of this section;

(ii) The specific nature of the employment and the product or services to be sold; and

(iii) The average monthly compensation paid in the previous six months to new employees, taking into account any deductions made pursuant to the employment contract.

(2) Advertising to recruit or employ a person in house-to-house sales shall not be false, misleading, or deceptive.

(3) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. The remedies and sanctions provided under chapter 19.86 RCW shall not preclude application of other available remedies and sanctions.

(4) No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement may be subject to penalties by reason of dissemination of any false, misleading, or deceptive advertisement, or for an advertisement that fails to meet the requirements of subsection (1) of this section, unless he or she has refused on the request of the director to furnish the name and address of the person purchasing the advertising.

NEW SECTION. Sec. 3. For the purposes of sections 1 and 2 of this act:

(1) "Employ" includes to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or a person in the employ of his or her parent or stepparent.

(2) "House-to-house sales" includes a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer.

NEW SECTION. Sec. 4. The department shall adopt rules to implement sections 1 through 3 of this act.

NEW SECTION. Sec. 5. Sections 1 through 3 of this act are each added to chapter 49.12 RCW.

Passed the House March 8, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 217

[Substitute House Bill No. 1370]

TAXING DISTRICTS—BOUNDARIES—DATE OF ESTABLISHMENT

AN ACT Relating to the date when taxing district boundaries are established for purposes of imposing property taxes; reenacting and amending RCW 84.09.030; and declaring an emergency.

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

Sec. 1. Section 84.09.030, chapter 15, Laws of 1961 as last amended by section 1, chapter 82, Laws of 1987 and by section 1, chapter 358, Laws of 1987 and RCW 84.09.030 are each reenacted and amended to read as follows:

~~((For the purposes of property taxation and the levy of property taxes))~~ Except as follows, the boundaries of counties, cities and all other taxing districts, for purposes of property taxation and the levy of property taxes, shall be the established official boundaries of such districts existing on the first day of March of the year in which the property tax levy is made(; and no such levy shall be made for any taxing district whose boundaries were not duly established on the first day of March of such year)).

The official boundaries of a newly incorporated taxing district shall be established at a different date in the year in which the incorporation occurred as follows:

(1) Boundaries for a newly incorporated city shall be established on the last day of March of the year in which the initial property tax levy is made, and the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within its boundaries shall be altered as of this date to exclude this area, if the budget for the newly incorporated city is filed pursuant to RCW 84.52.020 and the levy request of the newly incorporated city is filed pursuant to RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor shall submit the legal description of the proposed city to the department of revenue on or before the first day of March;

(2) Boundaries for a newly incorporated port district~~((s newly formed by election, with boundaries coterminous with other taxing district boundaries established prior to the first day of March, shall be the established official boundaries existing))~~ shall be established on the first day of October ~~((following formation. However, the))~~ if the boundaries of the newly incorporated port district are coterminous with the boundaries of another taxing district, as they existed on the first day of March of that year;

(3) Boundaries of ((a)) any other newly incorporated taxing district shall be established on the first day of June of the year in which the property tax levy is made ~~((whenever))~~ if the taxing district ((has incorporated that year and)) has boundaries coterminous with the boundaries of another taxing district, as they existed on the first day of March of that year~~((or))~~.

The boundaries of a taxing district ((have been altered that year by removing or adding territory)) shall be established on the first day of June if territory has been added to, or removed from, the taxing district after the first day of March of that year with boundaries coterminous with the boundaries of another taxing district ~~((to the taxing district))~~ as they existed on the first day of March of that year. However, the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was annexed to a city or town within its boundaries shall be altered as of this date to exclude this area. In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in such boundaries, is required by law to be filed in the office of the county auditor or other county official, said instrument shall be filed in triplicate. The officer with whom such instrument is filed shall transmit two copies to the county assessor.

No property tax levy shall be made for any taxing district whose boundaries are not established as of the dates provided 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 shall take effect immediately.

Passed the House April 17, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 218

[House Bill No. 1772]

GAME FISH—RENAMING AND DEFINING CERTAIN SPECIES

AN ACT Relating to renaming and defining certain species of fish; and amending RCW 75.08.011 and 77.08.020.

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

Sec. 1. Section 75.04.010, chapter 12, Laws of 1955 as last amended by section 4, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.08.011 are each amended to read as follows:

As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.
- (3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.
- (4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.
- (5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.
- (6) "To fish" and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.
- (7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.
- (8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.
- (9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.
- (10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.
- (11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.
- (12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks.

Sec. 2. Section 77.08.020, chapter 36, Laws of 1955 as last amended by section 21, chapter 457, Laws of 1985 and RCW 77.08.020 are each amended to read as follows:

(1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Ambloplites rupestris</i>	rock bass
<i>Coregonus clupeaformis</i>	lake white fish
<i>Ictalurus furcatus</i>	blue catfish
<i>Ictalurus melas</i>	black bullhead
<i>Ictalurus natalis</i>	yellow bullhead
<i>Ictalurus nebulosus</i>	brown bullhead
<i>Ictalurus punctatus</i>	channel catfish
<i>Lepomis cyanellus</i>	green sunfish
<i>Lepomis gibbosus</i>	pumpkinseed
<i>Lepomis gulosus</i>	warmouth

SCIENTIFIC NAME	COMMON NAME
Lepomis macrochirus	bluegill
Lota lota	burbot or fresh water ling
Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
((Salmo)) <u>Oncorhynchus</u> aquabonita	golden trout
((Salmo)) <u>Oncorhynchus</u> clarkii	cutthroat trout
((Salmo gairdnerii)) <u>Oncorhynchus mykiss</u>	rainbow or steelhead trout
Salmo salar (in its <u>landlocked form</u>)	Atlantic salmon
Salmo trutta	brown trout
Salvelinus fontinalis	eastern brook trout
Salvelinus malma	Dolly Varden trout
Salvelinus namaycush	lake trout
Stizostedion vitreum	Walleye
Thymallus arcticus	arctic grayling

(2) Private sector cultured aquatic products as defined in RCW 15.85-.020 are not game fish.

Passed the House March 6, 1989.

Passed the Senate April 18, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 219

[House Bill No. 1072]

AIR GUNS ON SCHOOL GROUNDS—PROHIBITION

AN ACT Relating to carrying air guns onto school premises; amending RCW 9.41.280; and prescribing penalties.

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

Sec. 1. Section 4, chapter 47, Laws of 1982 1st ex. sess. and RCW 9.41.280 are each amended to read as follows:

(1) It is unlawful for an elementary or secondary school student under the age of twenty-one knowingly to carry onto public or private elementary or secondary school premises:

- (a) Any firearm; or
- (b) Any dangerous weapon as defined in RCW 9.41.250; or
- (c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; or
- (d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect; or
- (e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas.

(2) Any such student violating subsection (1) of this section is guilty of a gross misdemeanor.

Any violation of subsection (1) of this section constitutes grounds for expulsion.

(3) Subsection (1) of this section does not apply to:

- (a) Any student of a private military academy; or
- (b) Any student engaged in military activities, sponsored by the federal or state governments while engaged in official duties; or
- (c) Any student who is attending a convention or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed; or
- (d) Any student who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes conducted on the school premises; or
- (e) Any student while the student is participating in a firearms or air gun competition approved by the school or school district.

Passed the House April 17, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 220

[House Bill No. 1729]

FINANCIAL INSTITUTIONS—TECHNICAL AMENDMENTS FOR INTERNAL CONSISTENCY IN TITLE 30 RCW

AN ACT Relating to internal consistency of Title 30 RCW; and amending RCW 30.04-.112, 30.12.190, and 30.22.190.

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

Sec. 1. Section 2, chapter 157, Laws of 1983 and RCW 30.04.112 are each amended to read as follows:

Sales of federal reserve funds with a maturity of one business day or under a continuing contract are not "loans or obligations" or "liabilities" for the purposes of the loan limits established by RCW (~~(30.04.110)~~) 30.04.111. However, sales of federal reserve funds with a maturity of more than one business day are subject to those limits.

For the purposes of this section, "sale of federal reserve funds" means any transaction among depository institutions involving the disposal of immediately available funds resulting from credits to deposit balances at federal reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

Sec. 2. Section 30.12.190, chapter 33, Laws of 1955 as amended by section 47, chapter 3, Laws of 1983 and RCW 30.12.190 are each amended to read as follows:

Every person who shall violate, or knowingly aid or abet the violation of any provision of RCW 30.04.010, 30.04.030, (~~(30.04.040,)~~) 30.04.050, 30.04.060, 30.04.070, 30.04.075, (~~(30.04.100, 30.04.110)~~) 30.04.111, 30.04.120, 30.04.130, 30.04.180, 30.04.210, 30.04.220, 30.04.280, 30.04.290, 30.04.300, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.080, 30.08.090, 30.08.095, 30.08.110, 30.08.120, 30.08.140, 30.08.150, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.030, 30.12.060, 30.12.070, (~~(30.12.080,)~~) 30.12.130, (~~(30.12.140, 30.12.150, 30.12.160,)~~) 30.12.180, 30.12.190, 30.16.010, 30.20.060, 30.40.010, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.240, 30.44.250, 43.19.020, 43.19.030, 43.19.050, and 43.19.090, and every person who fails to perform any act which it is therein made his duty to perform, shall be guilty of a misdemeanor. No person who has been convicted for the violation of the banking laws of this or any other state or of the United States shall be permitted to engage in or become an officer or official of any bank or trust company organized and existing under the laws of this state.

Sec. 3. Section 19, chapter 192, Laws of 1981 and RCW 30.22.190 are each amended to read as follows:

In each case, where it is provided in RCW 30.22.180 that a financial institution may make payment of funds deposited in an account to the personal representative of the estate of a deceased depositor or beneficiary, the financial institution may make payment of the funds to the following persons under the circumstances provided:

(1) In those instances where the deceased depositor left a surviving spouse, and the deceased depositor and the surviving spouse shall have executed a community property agreement which by its terms would include

funds of the deceased depositor remaining in the account, a financial institution may make payment of all funds in the name of the deceased spouse to the surviving spouse upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.

(2) In those instances where the balance of the funds in the name of a deceased depositor does not exceed two thousand five hundred dollars, payment of the decedent's funds remaining in the account may be made to the surviving spouse, next of kin, funeral director, or other creditor who may appear to be entitled thereto upon receipt of proof of death and an affidavit to the effect that no personal representative has been appointed for the deceased depositor's estate. As a condition to the payment, a financial institution may require such waivers, indemnity, receipts, and acquittance and additional proofs as it may consider proper.

(3) In those instances where ~~((the balance of the funds in the name of a deceased depositor does not exceed ten thousand dollars, to the person entitled thereto when presented by))~~ the person entitled presents an affidavit which meets the requirements of chapter 11.62 RCW.

A person receiving a payment from a financial institution pursuant to subsections (2) and (3) of this section is answerable and accountable therefor to any personal representative of the deceased depositor's estate wherever and whenever appointed.

Passed the House March 6, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 221

[House Bill No. 1042]

COMMERCIAL TRUCKS—BRAKE REQUIREMENTS

AN ACT Relating to front wheel brakes and air brakes on commercial motor vehicles; and amending RCW 46.37.340.

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

Sec. 1. Section 1, chapter 11, Laws of 1979 and RCW 46.37.340 are each amended to read as follows:

Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicle operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(1) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in RCW 46.04.552, shall be equipped with service brakes complying with the performance requirements of RCW 46.37.351 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(2) Parking brakes—adequacy. Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(3) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

(a) Trailers, semitrailers, or pole trailers of a gross weight not exceeding three thousand pounds, provided that:

(i) The total weight on and including the wheels of the trailer or trailers shall not exceed forty percent of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(ii) The combination of vehicles consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of RCW 46.37.351;

(b) Trailers, semitrailers, or pole trailers manufactured and assembled prior to July 1, 1965, shall not be required to be equipped with brakes when the total weight on and including the wheels of the trailer or trailers does not exceed two thousand pounds;

(c) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of RCW 46.37.351;

(d) Trucks and truck tractors manufactured before July 25, 1980, and having three or more axles need not have brakes on the front wheels, except

that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. (~~However, such trucks and truck tractors must be capable of complying with the performance requirements of RCW 46.37.351~~) Trucks and truck tractors manufactured on or after July 25, 1980, and having three or more axles are required to have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. Such trucks and truck tractors may be equipped with an automatic device to reduce the front-wheel braking effort by up to fifty percent of the normal braking force, regardless of whether or not antilock system failure has occurred on any axle, and:

(i) Must not be operable by the driver except upon application of the control that activates the braking system; and

(ii) Must not be operable when the pressure that transmits brake control application force exceeds eighty-five pounds per square inch (psi) on air-mechanical braking systems, or eighty-five percent of the maximum system pressure in vehicles utilizing other than compressed air.

All trucks and truck tractors having three or more axles must be capable of complying with the performance requirements of RCW 46.37.351;

(e) Special mobile equipment as defined in RCW 46.04.552 and all vehicles designed primarily for off-highway use with braking systems which work within the power train rather than directly at each wheel;

(f) Vehicles manufactured prior to January 1, 1930, may have brakes operating on only two wheels.

(g) For a forklift manufactured after January 1, 1970, and being towed, wheels need not have brakes except for those on the rearmost axle so long as such brakes, together with the brakes on the towing vehicle, shall be adequate to stop the combination within the stopping distance requirements of RCW 46.37.351.

(4) Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of three thousand pounds, manufactured or assembled after January 1, 1964, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen minutes, upon breakaway from the towing vehicle.

(5) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1964, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(6) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1964, shall be so designed that the supply reservoir used to provide air for the brakes shall be

safeguarded against backflow of air from the reservoir through the supply line.

(7) Two means of emergency brake operation.

(a) Air brakes. After January 1, 1964, every towing vehicle(~~(, when used to tow another vehicle)~~) equipped with air controlled brakes, in other than driveaway or towaway operations, and all other vehicles equipped with air controlled brakes, shall be equipped with two means for emergency application of the (~~(trailer)~~) brakes. One of these means shall apply the brakes automatically in the event of a reduction of the (~~(towing)~~) vehicle's air supply to a fixed pressure which shall be not lower than twenty pounds per square inch nor higher than forty-five pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(b) Vacuum brakes. After January 1, 1964, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (8) of this section, a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(8) Single control to operate all brakes. After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control in the towing vehicle.

(9) Reservoir capacity and check valve.

(a) Air brakes. Every bus, truck, or truck tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(b) Vacuum brakes. After January 1, 1964, every truck with three or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty percent.

(c) Reservoir safeguarded. All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(10) Warning devices.

(a) Air brakes. Every bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the primary supply air reservoir pressure of the vehicle is below fifty percent of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(b) Vacuum brakes. After January 1, 1964, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight inches of mercury.

(c) Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

Passed the House April 17, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 222

[House Bill No. 1043]

STATE PATROL—DISPOSITION OF UNCLAIMED PROPERTY

AN ACT Relating to unclaimed property in hands of the Washington state patrol; amending RCW 9.41.098; and adding a new chapter to Title 63 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) "Agency" means the Washington state patrol.

(2) "Chief" means the chief of the Washington state patrol or designee.

(3) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(4) "Contraband" means any property which is unlawful to produce or possess.

(5) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(6) "Owner" means the person in whom is vested the ownership, dominion, or title of the property.

(7) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(8) "Illegal items" means those items unlawful to be possessed.

NEW SECTION. Sec. 2. Whenever any personal property shall come into the possession of the officers of the state patrol in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the state agency, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said agency may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the state patrol subject to giving notice in the manner prescribed in section 3 of this act and the right of the owner, or the owner's legal representative, to reclaim the property within

one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the state patrol shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

(3) Destroy an item of personal property at the discretion of the chief if the chief determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the chief to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) At the end of one year, any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2). Any other item which is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief, in a manner that is illegal, may be destroyed.

NEW SECTION. Sec. 3. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder.

NEW SECTION. Sec. 4. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be forwarded to the state treasurer to be deposited into the state patrol highway account.

NEW SECTION. Sec. 5. If the owner of said personal property so sold, or the owner's legal representative, shall, at any time within three years after such money shall have been deposited in the state patrol highway account, furnish satisfactory evidence to the state treasurer of the ownership of said personal property, the owner or the owner's legal representative shall be entitled to receive from said state patrol highway account the amount so deposited therein with interest.

NEW SECTION. Sec. 6. (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the state patrol.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the state patrol.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act shall constitute a new chapter in Title 63 RCW.

Sec. 8. Section 2, chapter 223, Laws of 1988 and RCW 9.41.098 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) Found in the possession or under the control of a person at the time the person committed or was arrested for committing a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW;

(d) Found concealed on a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, having 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's breath, blood, or other bodily substance;

(e) Found in the possession of a person prohibited from possessing the firearm under RCW 9.41.040;

(f) Found in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a crime of violence or a crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) Found in the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Known to have been used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Known to have been used in the commission of a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniformed controlled substances act, chapter 69.50 RCW.

(2) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess. All firearms legal for citizen possession that are judicially forfeited or forfeited due to failure to make a claim under RCW 63.32.010 ((or)), 63.40.010, or 63.——(section 2 of this 1989 act) shall be submitted for auction to commercial sellers once a year if the submitting agency has accumulated at least ten firearms authorized for sale. Law enforcement agencies may conduct joint auctions for the purpose of maximizing efficiency. A maximum of ten percent of such firearms may be retained for use by local law enforcement agencies and the Washington state patrol. Before submission for auction, a court may temporarily retain forfeited firearms if needed for evidence. The proceeds from any sale shall be divided as follows: The local jurisdiction and the Washington state patrol shall retain its costs, including actual costs of storage and sale, and shall forward the remainder to the state department of wildlife for use in its firearms training program pursuant to RCW 77.32.155.

If a firearm is delivered to a law enforcement agency and the agency no longer requires use of the firearm, the agency shall dispose of the firearm by auction as provided by this subsection. The public auctioning agency shall, as a minimum, maintain a record of all forfeited firearms by manufacturer, model, caliber, serial number, date and circumstances of forfeiture, and final disposition. The records shall be open to public inspection and copying.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 18, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 223

[Substitute House Bill No. 1388]

TRANSIT WORKERS—COVERAGE UNDER GOOD SAMARITAN ACT

AN ACT Relating to persons rendering emergency care or transport; and amending RCW 4.24.310.

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

Sec. 1. Section 2, chapter 58, Laws of 1975 as last amended by section 501, chapter 212, Laws of 1987 and RCW 4.24.310 are each amended to read as follows:

For the purposes of RCW 4.24.300 the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Compensation" has its ordinary meaning but does not include: Nominal payments, reimbursement for expenses, or pension benefits~~(, nor does it include)~~; payments made to volunteer part-time and volunteer on-call personnel of fire departments, fire districts, ambulance districts, police departments, or any emergency response organizations; or any payment to a person employed as a transit operator who is paid for his or her regular work, which work does not routinely include providing emergency care or emergency transportation.

(2) "Emergency care" means care, first aid, treatment, or assistance rendered to the injured person in need of immediate medical attention and includes providing or arranging for further medical treatment or care for the injured person. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by RCW 4.24.300 does not apply to the negligent operation of any motor vehicle.

(3) "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination of circumstances which calls for immediate action.

Passed the House April 17, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 224

[Substitute Senate Bill No. 5591]

RIGHTS OF WAY—UNFRANCHISED USE—PENALTIES

AN ACT Relating to franchises on highway rights-of-way; amending RCW 47.44.060 and 47.04.090; and prescribing penalties.

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

Sec. 1. Section 47.44.060, chapter 13, Laws of 1961 and RCW 47.44.060 are each amended to read as follows:

(1) Any person, firm, or corporation who (~~shall~~) constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light, or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law (~~shall be~~) is guilty of a misdemeanor (~~and~~). Each day of violation (~~shall be~~) is a separate and distinct offense.

(2) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is liable for a civil penalty of one hundred dollars per calendar day beginning forty-five days from the date notice is given and until application is made for a franchise or permit or until the facility is removed as required by notice. The state shall give notice by certified mail that a franchise or permit is required or the facility must be removed and shall include in the notice sufficient information to identify the portion of right of way in question. Notice is effective upon delivery.

(3) If a person, firm or corporation does not apply for a permit or franchise within forty-five days of notice given in accordance with subsection (2) of this section or the state determines that the facility constructed or maintained without a permit or franchise would not be granted a permit or franchise, the state may order the facility to be removed within such time period as the state may specify. If the facility is not removed, the state, in

addition to any other remedy, may remove the facility at the expense of the owner.

Sec. 2. Section 47.04.090, chapter 13, Laws of 1961 and RCW 47.04-.090 are each amended to read as follows:

It (~~shall be~~) is a misdemeanor for any person to violate any of the provisions of this title unless (~~such violation is~~) specifically provided otherwise by this title or other law of this state (~~declared to be a felony or a gross misdemeanor~~).

Unless another penalty is provided in this title (~~provided~~), every person convicted of a misdemeanor for violation of any provisions of this title shall be punished (~~accordingly~~) in accordance with chapter 9A.20 RCW.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 225

[House Bill No. 1060]

STATE AND LOCAL GOVERNMENT BONDS—INFORMATION REQUIREMENTS

AN ACT Relating to bond information; amending RCW 39.44.200, 39.44.210, 39.44.230, 39.44.240, and 43.63A.155; and repealing RCW 39.44.220.

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

Sec. 1. Section 5, chapter 130, Laws of 1985 as amended by section 12, chapter 297, Laws of 1987 and RCW 39.44.200 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 39.44.200 through 39.44.240.

(1) "Bond" means "bond" as defined in RCW 39.46.020, but also includes any other indebtedness that may be issued by any local government to fund private activities or purposes where the indebtedness is of a nonrecourse nature payable from private sources.

(2) "Local government" means "local government" as defined in RCW 39.46.020.

(3) "Type of bond" includes: (a) General obligation bonds; (b) revenue bonds; (c) local improvement district bonds; (d) special assessment bonds such as those issued by irrigation districts and diking districts; and (e) other classes of bonds.

(4) "State" means "state" as defined in RCW 39.46.020 but also includes any commissions or other entities of the state.

Sec. 2. Section 1, chapter 130, Laws of 1985 and RCW 39.44.210 are each amended to read as follows:

~~((Each local government that issues any type of bond, where the state fiscal agency does not act as the bond registrar for the bond issue;))~~ For each state or local government bond issued, the underwriter of the issue shall supply the department of community development with information on the bond issue within ~~((thirty))~~ twenty days of its issuance. In cases where the issuer of the bond makes a direct or private sale to a purchaser without benefit of an underwriter, the issuer shall supply the required information. The bond issue information shall be provided on a form prescribed by the department of community development and shall include but is not limited to: (1) The par value of the bond issue; (2) the effective interest rates; (3) a schedule of maturities; (4) the purposes of the bond issue; ~~((and))~~ (5) cost of issuance information; and (6) the type of bonds that are issued. A copy of the bond covenants shall be supplied with this information.

For each state or local government bond issued, the issuer's bond counsel promptly shall provide to the underwriter or to the department of community development information on the amount of any fees charged for services rendered with regard to the bond issue.

Sec. 3. Section 3, chapter 130, Laws of 1985 and RCW 39.44.230 are each amended to read as follows:

The department of community development may adopt rules and regulations pursuant to the administrative procedure act to require (1) the submission of bond issuance information by underwriters and bond counsel to the department of community development in a timely manner and (2) the submission of additional information on bond issues by state and local governments, including summaries of outstanding bond issues.

Sec. 4. Section 4, chapter 130, Laws of 1985 and RCW 39.44.240 are each amended to read as follows:

Failure to file the information required by RCW 39.44.210 ~~((through))~~ and 39.44.230 shall not affect the validity of the bonds that are issued.

Sec. 5. Section 6, chapter 130, Laws of 1985 and RCW 43.63A.155 are each amended to read as follows:

The department of community development shall retain the bond information it receives under RCW 39.44.210 ~~((through))~~ and 39.44.230 and shall publish summaries of local government bond issues at least once a year.

The department of community development shall adopt rules under chapter ~~((34.04))~~ 34.05 RCW to implement RCW 39.44.210 ~~((through))~~ and 39.44.230.

NEW SECTION. Sec. 6. Section 2, chapter 130, Laws of 1985 and RCW 39.44.220 are each repealed.

Passed the House April 17, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 226

[House Bill No. 1241]

EXAMINING BOARD OF PSYCHOLOGISTS—STAGGERED TERMS FOR MEMBERS

AN ACT Relating to staggering the terms of the examining board of psychology; and amending RCW 18.83.035.

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

Sec. 1. Section 76, chapter 279, Laws of 1984 as amended by section 2, chapter 27, Laws of 1986 and RCW 18.83.035 are each amended to read as follows:

There is created the examining board of psychology which shall examine the qualifications of applicants for licensing. The board shall consist of seven psychologists and two public members, all appointed by the governor. The public members shall not be and have never been psychologists or in training to be psychologists; they may not have any household member who is a psychologist or in training to be a psychologist; they may not participate or ever have participated in a commercial or professional field related to psychology, nor have a household member who has so participated; and they may not have had within two years before appointment a substantial financial interest in a person regulated by the board. Each psychologist member of the board shall be a citizen of the United States who has actively practiced psychology in the state of Washington for at least three years immediately preceding appointment and who is licensed under this chapter. ~~((Each member of the board shall serve for a term of five years.))~~ Board members shall be appointed for a term of five years, except that the terms of the existing appointees shall be adjusted by the governor so that no more than two members' terms expire each year with all subsequent appointments for a five-year term. Upon the death, resignation, or removal of a member, the governor shall appoint a successor to serve for the unexpired term. The board shall elect one of its members to serve as chairperson.

Passed the House March 2, 1989.

Passed the Senate April 14, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 227

[Substitute House Bill No. 1455]

DISTRICT COURT JUDGES—ELECTION, QUALIFICATIONS, AND NUMBER

AN ACT Relating to the election of district court judges; amending RCW 3.34.050, 3.34.060, 3.30.080, 3.34.010, and 3.34.150; adding a new section to chapter 3.38 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 continue to provide the option for local election of district court judges where a county district court with multiple courtrooms is unified into a single district court for operational and administrative purposes.

NEW SECTION. Sec. 2. A new section is added to chapter 3.38 RCW to read as follows:

A county legislative authority for a county that has a single district but has multiple locations for courtrooms may establish separate electoral districts to provide for election of district court judges by subcounty local districts. As nearly as possible, the electoral districts shall follow precinct lines, follow neighborhood and community boundaries, and include approximately equal population. The procedures in chapter 3.38 RCW for the establishment of district court districts apply to the establishment of separate electoral districts authorized by this section.

Sec. 3. Section 14, chapter 299, Laws of 1961 as last amended by section 11, chapter 258, Laws of 1984 and RCW 3.34.050 are each amended to read as follows:

At the general election in November(;-) 1962 and quadrennially thereafter, there shall be elected by the voters of each district court district the number of judges authorized for the district by the district court districting plan. Judges shall be elected for each district and electoral district, if any, by the qualified electors of the district in the same manner as judges of courts of record are elected. Not less than ten days before the time for filing declarations of candidacy for the election of judges for districts entitled to more than one judge, the county auditor shall designate each such office of district judge to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. At the time of the filing of the declaration of candidacy, each candidate shall designate by number which one, and only one, of the numbered offices for which he or she is a candidate and the name of the candidate shall appear on the ballot for only the numbered office for which the candidate filed a declaration of candidacy.

Sec. 4. Section 15, chapter 299, Laws of 1961 as amended by section 12, chapter 258, Laws of 1984 and RCW 3.34.060 are each amended to read as follows:

To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

(1) Be a registered voter of the district court district and electoral district, if any; and

(2) Be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) A person who has been elected and has served as a justice of the peace, district judge, municipal judge, or police judge in Washington; or

(c) In those districts having a population of less than ten thousand persons, a person who has taken and passed the qualifying examination for the office of district judge as shall be provided by rule of the supreme court.

Sec. 5. Section 8, chapter 299, Laws of 1961 as amended by section 7, chapter 258, Laws of 1984 and RCW 3.30.080 are each amended to read as follows:

The supreme court may adopt rules of procedure for district courts. A district court may adopt local rules of procedure which are not inconsistent with state law or with the rules adopted by the supreme court. The rules for a county with a single district and multiple facilities may include rules to provide where cases shall be filed and where cases shall be heard. If the rules of the supreme court authorized under this section are adopted, all procedural laws in conflict with the rules shall be of no effect.

Sec. 6. Section 10, chapter 299, Laws of 1961 as last amended by section 111, chapter 202, Laws of 1987 and RCW 3.34.010 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, three; Asotin, one; Benton, two; Chelan, one; Clallam, one; Clark, four; Columbia, one; Cowlitz, two; Douglas, one; Ferry, two; Franklin, one; Garfield, one; Grant, one; Grays Harbor, two; Island, three; Jefferson, one; King, twenty-four; Kitsap, two; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, three; Pend Oreille, two; Pierce, eight; San Juan, one; Skagit, three; Skamania, one; Snohomish, eight; Spokane, eight; Stevens, two; Thurston, one; Wahkiakum, one; Walla Walla, three; Whatcom, two; Whitman, two; Yakima, six: PROVIDED, That this number may be increased in accordance with a resolution of the county commissioners under RCW 3.34.020.

Sec. 7. Section 24, chapter 299, Laws of 1961 as amended by section 21, chapter 258, Laws of 1984 and RCW 3.34.150 are each amended to read as follows:

If a district has more than one judge, the supreme court may by rule provide for the manner of selection of one of the judges to serve as presiding

judge and prescribe the presiding judge's duties. If a county has multiple districts or has one district with multiple electoral districts, the supreme court may by rule provide for the manner of selection of one of the judges to serve as presiding judge and prescribe the presiding judge's duties.

Passed the House March 13, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 228

[Substitute House Bill No. 2088]

DOMESTIC INSURER'S HOLDING COMPANY SYSTEM—ACCEPTANCE OF FEES BY PERSONS IN

AN ACT Relating to acceptance of fees by persons in a domestic insurer's holding company system; and amending RCW 48.07.130.

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

Sec. 1. Section .07.13, chapter 79, Laws of 1947 as amended by section 5, chapter 339, Laws of 1981 and RCW 48.07.130 are each amended to read as follows:

(1) No person having any authority in the investment or disposition of the funds of a domestic insurer and no officer or director of an insurer shall accept, except for the insurer, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of insurance or of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the insurer direct upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the insurer's funds under this code.

(2) This section does not prohibit a life insurer from making a policy loan to such person on a life insurance contract issued by it and in accordance with the terms thereof.

(3) The commissioner may(~~(-by regulations from time to time, define and))~~ permit additional exceptions to the prohibition contained in subsection (1) of this section (~~((solely))~~) to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

In addition, the commissioner may permit exceptions to the prohibitions contained in subsection (1) of this section where the payment of a fee,

brokerage, gift, commission, or other emolument is fully disclosed to the insurer's officers and directors and is reasonable in relation to the service performed.

Passed the House March 9, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 229

[House Bill No. 2135]

FARM LABOR LIENS—TIME FOR FILING

AN ACT Relating to farm labor liens; amending RCW 60.11.040; and declaring an emergency.

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

Sec. 1. Section 4, chapter 242, Laws of 1986 and RCW 60.11.040 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section with respect to the lien of a landlord, any lien holder must after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor within twenty days after the cessation of the work or labor for which the lien is claimed: (a) File a statement evidencing the lien with the department of licensing; and (b) if the lien holder is to be allowed costs, disbursements, and attorneys' fees, mail a copy of such statement to the last known address of the debtor by certified mail, return receipt requested, within ten days.

(2) The statement shall be in writing, signed by the claimant, and shall contain in substance the following information:

(a) The name and address of the claimant;

(b) The name and address of the debtor;

(c) The date of commencement of performance for which the lien is claimed;

(d) A description of the labor services, materials, or supplies furnished;

(e) A description of the crop and its location to be charged with the lien sufficient for identification; and

(f) The signature of the claimant.

(3) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers, including provisions for filing crop liens together with financing statements filed pursuant to RCW 62A.9-401 so that one request will reveal all filed crop liens and security interests.

(4) Any landlord claiming a lien under this chapter for rent shall file a statement evidencing the lien with the department of licensing. A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A landlord lien covering a lease term longer than five years may be refiled in accordance with RCW 60.11.050(4). A landlord who has a right to a share of the crop may place suppliers on notice by filing evidence of such interest in the same manner as provided for filing a landlord's lien.

NEW SECTION. Sec. 2. 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. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 230

[Senate Bill No. 5250]

SURFACE MINING—RECLAMATION EXPENSES INCURRED BY STATE—NO LIEN AGAINST RECLAIMED LAND

AN ACT Relating to surface mining; and amending RCW 78.44.140.

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

Sec. 1. Section 15, chapter 64, Laws of 1970 ex. sess. as amended by section 6, chapter 215, Laws of 1984 and RCW 78.44.140 are each amended to read as follows:

Upon receipt of the operator's report, and at any other reasonable time the department may elect, the department shall cause the permit area to be inspected to determine if the operator has complied with the reclamation plan and the department's rules and regulations.

The operator shall proceed with reclamation as scheduled in the reclamation plan. Following any written notice by the department noting deficiencies, the operator shall commence action within thirty days, or as directed by the department if it has determined that emergency actions are required, to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: PROVIDED, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance

with the applicable time provisions of such laws. The department may extend performance periods referred to in this section and in RCW 78.44.090, for delays clearly beyond the operator's control, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

Within thirty days after notification by the operator and when in the judgment of the department reclamation of a unit of surface mined area is properly completed, the mining operator shall be notified in writing and his bond on said area shall be released or decreased proportionately.

If reclamation of surface mined land is not proceeding in accordance with the reclamation plan and the operator has not commenced action to rectify deficiencies within thirty days after notification by the department or as directed by the department, or if reclamation is not properly completed in conformance with the reclamation plan within two years after completion or abandonment of surface mining on any segment of the permit area, the department is authorized, with the staff, equipment and material under ~~(his)~~ its control, or by contract with others, to take such actions as are necessary for the reclamation of the surface mined areas. If the department intends to undertake the reclamation, the department shall ascertain the probable costs of reclamation and shall notify the operator, the surety, and the owner of the probable costs. The operator or surety, or both, shall pay that amount to the department for reclaiming the surface mined land. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The department shall notify the operator, the owner, and the surety by order. The order shall state the amount of necessary expenses incurred by the department in reclaiming the surface mined land and a notice that the amount is due and payable to the department by the operator and the surety to the extent that the amount has not already been paid. The department shall refund all amounts received above the amount of expenses incurred.

If the amount specified in the notice or order is not paid within thirty days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the notice or order is directed do business to recover the amount specified. The surety shall be liable to the state to the extent of the bond.

~~((The amount owed the department by the operator for the reclamation performed by the state may be recovered by a lien against the reclaimed property, which may be enforced in the same manner and with the same effect as a mechanic's lien.))~~

In addition to the other liabilities imposed by this chapter, failure to commence action to rectify deficiencies in reclamation within thirty days

after notification by the department or failure satisfactorily to complete reclamation work on any segment of the permit area within two years after completion or abandonment of surface mining on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit and refusal to issue another permit to the delinquent operator until such deficiencies are corrected by the operator.

Passed the Senate March 2, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 231

[Senate Bill No. 5853]

MACHINE GUNS—USE IN COMMISSION OF FELONY—CLASS A FELONY

AN ACT Relating to penalties for discharging a machine gun or threatening or menacing with a machine gun, when such discharging, threatening, or menacing is in the commission or furtherance of a felony other than a violation of RCW 9.41.190; amending RCW 9.41.200; adding a new section to chapter 9.41 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature is concerned about the increasing number of drug dealers, gang members, and other dangerous criminals who are increasingly being found in possession of machine guns. The legislature recognizes that possession of machine guns by dangerous criminals represents a serious threat to law enforcement officers and the general public. The use of a machine gun in furtherance of a felony is a particularly heinous crime because of the potential for great harm or death to a large number of people. It is the intent of the legislature to protect the public safety by deterring the illegal use of machine guns in the furtherance of a felony by creating a separate offense with severe penalties for such use of a machine gun.

Sec. 2. Section 2, chapter 64, Laws of 1933 and RCW 9.41.200 are each amended to read as follows:

For the purpose of RCW 9.41.190 through ((9.41.220)) section 3 of this act, a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW to read as follows:

It is unlawful for a person, in the commission or furtherance of a felony other than a violation of RCW 9A.10.010, to discharge a machine gun or to menace or threaten with a machine gun, another person. A violation of this section shall be punished as a class A felony under chapter 9A.20 RCW.

Passed the Senate March 8, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 232

[Senate Bill No. 5858]

SCHOOL DISTRICTS—BOARD OF DIRECTORS MEETINGS—LOCATION

AN ACT Relating to education; amending RCW 28A.59.100; and declaring an emergency.

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

Sec. 1. Section 28A.59.100, chapter 223, Laws of 1969 ex. sess. and RCW 28A.59.100 are each amended to read as follows:

The board of directors shall maintain an office (~~where all regular meetings shall be held, and~~) where all records, vouchers and other important papers belonging to the board may be preserved. Such records, vouchers, and other important papers at all reasonable times shall be available for public inspection. The regular meetings shall be held within the district boundaries.

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

Passed the Senate April 18, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 233

[Substitute House Bill No. 1444]

AT-RISK STUDENTS—ASSISTANCE

AN ACT Relating to students at risk; amending RCW 28A.120.010, 28A.120.016, 28A.120.020, 28A.120.022, 28A.120.032, 28A.58.217, and 28A.02.061; adding a new section to chapter 28A.41 RCW; adding new sections to Title 28A RCW; creating new sections; providing an expiration date; and making an appropriation.

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

STUDENTS AT RISK
PART I
LEARNING ASSISTANCE PROGRAM FOR STUDENTS AT RISK
OF DROPPING OUT

Sec. 1. Section 1, chapter 478, Laws of 1987 and RCW 28A.120.010 are each amended to read as follows:

The legislature finds that an important and effective means of improving the educational performance of many students with special needs is to improve the general education program. The legislature also finds that there is a continuum of educational program needs among students with learning problems or poor academic performance. The legislature wants to encourage school districts to serve students with special needs within the regular classroom. Therefore, the legislature intends to replace the remediation program with a broader range of program options, without reducing special instructional programs when those services are both necessary and appropriate. The legislature intends to enhance the ability of basic education teachers to identify and address learning problems within the regular classroom. The legislature further intends to stimulate development by local schools and school districts of innovative and effective means of serving students with special needs. The goal is to increase the achievement of students with special needs in a shorter period of time using processes that are more timely, appropriate and effective in producing better outcomes.

Sec. 2. Section 4, chapter 478, Laws of 1987 and RCW 28A.120.016 are each amended to read as follows:

Each school district which applies for state funds distributed pursuant to RCW 28A.120.022 shall conduct a needs assessment and, on the basis of its findings, shall develop a plan for the use of these funds. The plan may incorporate plans developed by each eligible school. Districts are encouraged to place special emphasis on addressing the needs of students in the early grades. The needs assessment and plan shall be updated at least biennially, and shall be determined in consultation with an advisory committee including but not limited to members of the following groups: Parents, including parents of students served by the program; teachers; principals; administrators; and school directors. The district shall submit a biennial application specifying this plan to the office of the superintendent of public instruction for approval. Plans shall include:

- (1) The means which the district will use to identify participating students to receive additional services or support under the proposed program;
- (2) The specific services or activities which the funds will be used to support, and their estimated costs;
- (3) A plan for annual evaluation of the program by the district, based on performance objectives related to basic skills achievement of participating students, and a plan for reporting the results of this evaluation to the superintendent of public instruction;

(4) Procedures for recordkeeping or other program documentation as may be required by the superintendent of public instruction; and

(5) The approval of the local school district board of directors.

Sec. 3. Section 6, chapter 478, Laws of 1987 and RCW 28A.120.020 are each amended to read as follows:

Services or activities which may be supported under an approved program of learning assistance shall include but not be limited to:

(1) Consultant teachers to assist classroom teachers in meeting the needs of participating students;

(2) Instructional support staff and instructional assistants to assist classroom teachers in meeting the needs of participating students;

(3) In-service training for classroom teachers, instructional support staff, and instructional assistants in multicultural differences and the identification of learning problems or in instructional methods for teaching students with learning problems;

(4) Special instructional programs for participating students, of sufficient size, scope, and quality to address the needs of these students and to give reasonable promise of substantial progress toward((s)) meeting their educational objectives;

(5) Tutoring assistance during or after school or on Saturday provided by instructional support staff, a student tutor, teacher, or instructional assistant;

(6) In-service training for parents of participating students; and

(7) Counseling, with an emphasis on services for elementary students who are in need of learning assistance, provided by instructional support staff such as school counselors, school psychologists, school nurses, and school social workers. Pursuant to the provisions of section 4(2) of this act, learning assistance funds may be used to provide counseling for students who in the absence of counseling would likely become in need of such learning assistance.

**Sec. 4. Section 7, chapter 478, Laws of 1987 and RCW 28A.120.022 are each amended to read as follows:*

(1) Each school district which has established an approved program shall be eligible, as determined by the superintendent of public instruction, for state funds made available for the purposes of such programs. The superintendent of public instruction shall make use of data derived from the basic skills tests in determining the amount of funds for which a district may be eligible. Funds shall be distributed according to the district's total full-time equivalent enrollment in kindergarten through grade nine and the percentage of the district's students taking the basic skills tests who scored in the lowest quartile as compared with national norms. In making this calculation, the superintendent of public instruction may use an average over the immediately preceding five or fewer years of the district's percentage scoring in the lowest

quartile. The superintendent of public instruction shall also deduct the number of students at these age levels who are identified as specific learning disabled and are generating state funds for special education programs conducted pursuant to chapter 28A.13 RCW, in distributing state funds for learning assistance.

(2) In those districts receiving learning assistance funds in which students' test scores improve, districts may retain learning assistance funds based on the state-wide average of students eligible for participation in the learning assistance program, or the district's current level of funding under the learning assistance program, whichever is higher: PROVIDED, That only those learning assistance funds which are retained but would have been reduced due to improved student test scores, may be used for district identified purposes: PROVIDED FURTHER, That districts shall consider, as the first priority, expending such retained funds on prevention and intervention programs for students in grades preschool through sixth grade.

(3) The superintendent of public instruction shall review this allocation method and submit a report to the legislature by December 1, 1991. The report shall include but is not limited to the following information:

(a) An analysis of the impact of the allocation method and any recommendations regarding the continuation or discontinuation of the allocation method;

(b) A comparison of students' test scores for each district participating in the learning assistance program for the 1988-89 and 1990-91 school years against the test scores of students in the district for the 1986-87 and 1987-88 school years; and

(c) An analysis of how districts expended unencumbered learning assistance funds, if any, resulting from the allocation method. The distribution formula in this section is for allocation purposes only.

*Sec. 4 was vetoed, see message at end of chapter.

PART II SUBSTANCE ABUSE AWARENESS

Sec. 5. Section 206, chapter 518, Laws of 1987 and RCW 28A.120.032 are each amended to read as follows:

The superintendent of public instruction shall adopt rules to implement this section, RCW 28A.120.030, and ((RCW)) 28A.120.034 through 28A.120.050 and shall distribute to school districts on a grant basis, from moneys appropriated for the purposes of this section, RCW 28A.120.030 and ((RCW)) 28A.120.034 through 28A.120.050, funds for the development and implementation of educational and disciplinary policies leading to the implementation of prevention, intervention, and aftercare activities regarding the use and abuse of drugs and alcohol. The following program areas

may be funded through moneys made available for this section, RCW 28A-.120.030, and (~~RCW~~) 28A.120.034 through 28A.120.050, including but not limited to:

- (1) Comprehensive program development;
- (2) Prevention programs directed at addressing addictive substances such as alcohol, drugs, and nicotine;
- (3) Elementary identification and intervention programs including counseling programs;
- (4) Secondary identification and intervention programs including counseling programs;
- (5) School drug and alcohol core team development and training;
- (6) Development of referral and preassessment procedures;
- (7) Aftercare;
- (8) Drug and alcohol specialist;
- (9) Staff, parent, student, and community training; and
- (10) Coordination with law enforcement, community service providers, other school districts, educational service districts, and drug and alcohol treatment facilities.

NEW SECTION. Sec. 6. A new section is added to Title 28A RCW to read as follows:

To protect children in the public schools of this state from exposure to the addictive substance of nicotine, each school district board of directors shall adopt a written policy mandating a prohibition on the use of all tobacco products on public school property. A total ban on the use of all tobacco products shall be enforced by September 1, 1991. The policy may allow for exemptions from this prohibition with regard to alternative educational programs.

PART III

HIGH SCHOOL DROP-OUT RATE REDUCTION

NEW SECTION. Sec. 7. The legislature finds that high schools and high school programs designed to meet the diverse needs of students can be an important factor in decreasing the dropout rate. The development of alternative high schools, schools-within-schools, student-centered collaborative learning communities utilizing interdisciplinary strategies, and subject-matter-related schools is encouraged.

High schools are also encouraged to develop programs providing for flexibility in daily, weekly, monthly, and yearly schedules. High schools are further encouraged to develop flexible teaching arrangements, including tutor programs which may include the use of adults, high school students, or college students as tutors, with particular encouragement to consider seeking persons from ethnic and racial minority groups to serve as tutors.

High schools are also encouraged to use research that has been proven effective and has produced significant outcomes in working with both potential dropouts and dropouts.

NEW SECTION. Sec. 8. (1) Beginning with the 1989-1990 school year and concluding at the end of the 1993-1994 school year, any student who has dropped out of high school for six weeks or longer, or has returned from participation in a substance abuse treatment program, or is about to become or is a teen parent, or has returned from hospitalization due to a mental health problem may choose to attend any other high school in the state regardless of residence. Students may attend high school in a nonresident school district only if they are accepted by the high school and pursuant to policies and procedures of the nonresident school district. Receiving school districts may not charge nonresident students tuition. Schools and districts are encouraged to accept students who choose to transfer if they meet these conditions. Basic education funding allocations from the state shall follow the students.

(2) The superintendent of public instruction shall report to the legislature and the governor by December 1, 1994, on the student enrollment patterns pursuant to the provisions of this section.

(3) This section shall expire December 31, 1994.

Sec. 9. Section 222, chapter 518, Laws of 1987 and RCW 28A.58.217 are each amended to read as follows:

(1) ~~((School districts are hereby authorized to))~~ The superintendent of public instruction shall contract with the University of Washington for the education of ((eligible academically)) highly capable ((high school)) students below eighteen years of age who are admitted or enrolled at such early entrance program or transition school((s)) as are now or hereafter established and maintained by the University of Washington.

(2) ~~((School districts may authorize))~~ The superintendent of public instruction ((to)) shall allocate directly to the University of Washington all ((or a portion)) of the state basic education allocation moneys, state categorical moneys excepting categorical moneys provided for the highly capable students program under chapter 28A.16 RCW, and federal moneys generated by a student while attending ((α)) an early entrance program or transition school at the University of Washington ((early entrance or transition school pursuant to this section directly to the university. PROVIDED; That)). The allocations shall be according to each student's school district of residence. The expenditure of such ((state)) moneys shall be ((expended exclusively for instruction and related activities necessary for students to fulfill the high school graduation requirements established by their school district of enrollment)) limited to selection of students, precollege instruction, special advising, and related activities necessary for the support of students while attending a transition school or early entrance program at the University of Washington. Such allocations may be supplemented with such

additional payments by other parties as necessary to cover the actual and full costs of such instruction and other activities.

(3) The provisions of subsections (1) and (2) of this section shall apply during the first three years a student is attending a transition school or early entrance program at the University of Washington or through the academic school year in which the student turns eighteen, whichever occurs first. No more than thirty students shall be admitted and enrolled in the transition school at the University of Washington in any one year.

((3)) (4) The superintendent of public instruction shall adopt or amend rules pursuant to chapter ((34.04)) 34.05 RCW implementing subsection (2) of this section before August 31, 1989.

PART IV FLEXIBLE SCHEDULING

NEW SECTION. Sec. 10. A new section is added to chapter 28A.41 RCW to read as follows:

The superintendent of public instruction shall establish procedures to allow school districts to claim basic education allocation funds for students attending classes that are provided outside the regular school year to the extent such attendance is in lieu of attendance during the regular school year: PROVIDED, That nothing in this section shall be construed to alter the basic education allocation for which the district is otherwise eligible.

Sec. 11. Section 13, chapter 283, Laws of 1969 ex. sess. as last amended by section 2, chapter 189, Laws of 1985 and RCW 28A.02.061 are each amended to read as follows:

The following are school holidays, and school shall not be taught on these days: ~~((Saturday;))~~ Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday in February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday in May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day, the fourth Thursday in November, commonly known as Thanksgiving Day; the day immediately following Thanksgiving Day; the twenty-fifth day of December, commonly called Christmas Day: PROVIDED, That no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught.

PART V
CORE COMPETENCIES

NEW SECTION. Sec. 12. (1) The state board of education, in consultation with the superintendent of public instruction, the higher education coordinating board, the state board for community college education, the state board for vocational education in the office of the governor, institutions of higher education, and other appropriate agencies, shall study and evaluate strategies to replace the use of carnegie units (seat time) with core competencies, including critical thinking skills, to evaluate student performance.

(2) The study shall take into consideration relevant information from projects under the schools for the twenty-first century program pursuant to RCW 28A.100.030 through 28A.100.038, the report of the temporary committee on the assessment and accountability of educational outcomes pursuant to section 4, chapter 401, Laws of 1987, and information as may be available from any field tests of educational outcomes and indicators as may be established pursuant to RCW 28A.100.017.

(3) The state board of education shall report the study findings and recommendations to the legislature, the governor, the superintendent of public instruction, the higher education coordinating board, the state board for community college education, and the state board for vocational education in the office of the governor by December 1, 1990.

(4) This section shall expire December 31, 1990.

PART VI
PILOT PROGRAM FOR PREVENTION OF LEARNING
PROBLEMS

NEW SECTION. Sec. 13. (1) The superintendent of public instruction may select up to five school districts to participate in a pilot program for prevention of learning problems and academic delays. The program shall begin with the 1989-90 school year and conclude at the end of the 1990-91 school year.

(2) If at the end of a pilot school year the number of specific learning disabled students served by a participating school district in handicapped education programs has decreased as a result of the pilot project, the district shall be reimbursed based upon the number of specific learning disabled students served in special education during the school year prior to commencement of the pilot project. These funds will be used to support the pilot project for prevention of learning problems and academic delays: PROVIDED, That school districts participating in the pilot prevention program established under this section who have ongoing pilot projects previously approved by the superintendent of public instruction shall utilize the school year prior to initiation of such pilot project as the base for the reimbursement calculation under this subsection when the number of specific

learning disabled students identified has decreased as a result of participation in the pilot program established under this section.

(3) School districts applying to participate in the pilot program established under this section shall submit to the superintendent of public instruction a proposed program budget for the 1989-90 school year and a preliminary budget plan for the 1990-91 school year. These proposed budgets or budget plans shall outline the resources to be used by the district in the identification and early prevention of learning problems. Districts selected to participate shall submit an updated budget proposal to the superintendent of public instruction prior to the 1990-91 school year.

(4) Applications submitted by school districts shall also include:

(a) Assurances that the school district will not deny access to special education programs for handicapped students entitled to services under chapter 28A.13 RCW;

(b) A description of methods to be used by the district to identify students for additional instruction or other services provided under the pilot project;

(c) A description of the types of instructional programs or services to be used in prevention of learning problems;

(d) A plan for evaluating the effectiveness of the district's project at the end of the 1990-91 school year, using student test scores and other indicators of academic progress and, as appropriate, vocational progress, as determined by the district; and

(e) Other information as may be required by the superintendent of public instruction.

(5) For the purposes of this section, "state allocation for handicapped students" includes state handicapped education moneys allocated for students served in special education programs provided under chapter 28A.13 RCW and basic education allocations generated by such students under the state funding formula adopted pursuant to RCW 28A.41.140.

(6) This section shall expire December 31, 1991.

NEW SECTION. Sec. 14. (1) Prior to December 1, 1991, the superintendent of public instruction shall submit a report on the pilot program established under section 13 of this act to the legislature and the governor. The report shall include an analysis of the effectiveness of the program and recommendations on whether the program should be continued or expanded to other districts.

(2) This section shall expire December 31, 1991.

***PART VII**

OUTCOMES-BASED LEARNING ASSISTANCE EDUCATION RECOGNITION AWARD PROGRAM

NEW SECTION. Sec. 15. (1) *The superintendent of public instruction shall develop and implement by December 1, 1991, an outcomes-based*

learning assistance education recognition program to recognize schools, or school districts, or both, for the development and use of outcomes-based learning assistance education programs which have resulted in significant and continuous improvement in students' basic and work skills performance.

(2) The superintendent of public instruction shall develop separate awards under the recognition program for each basic skills and work skills category as defined under RCW 28A.58.754, including an award for outcomes-based health and physical education learning assistance education programs. The superintendent shall also develop an award for interdisciplinary outcomes-based learning assistance education programs and an award for outcomes-based positive discipline learning assistance education programs.

The superintendent may develop a separate award for other desired outcomes identified by school districts and communities pursuant to local student learning objectives required under RCW 28A.58.090 and self-study processes required under RCW 28A.58.085.

(3) In developing the recognition program, the superintendent shall consult with school districts and take into consideration:

(a) Relevant information from projects under the schools for the twenty-first century program pursuant to RCW 28A.100.030 through 28A.100.038;

(b) The report of the temporary committee on the assessment and accountability of educational outcomes pursuant to section 4, chapter 401, Laws of 1987;

(c) Information as might become available from any field tests of educational outcomes and indicators as may be established pursuant to RCW 28A.100.017;

(d) The results of the core competencies study pursuant to section 12 of this act; and

(e) Information from the model curriculum programs or curriculum guidelines developed pursuant to RCW 28A.03.425.

(4) The superintendent of public instruction is encouraged to link the outcomes-based learning assistance education recognition program with student learning objectives required under RCW 28A.58.090 and school and school district progress under the self-study requirements pursuant to RCW 28A.58.085.

(5) The superintendent of public instruction is encouraged to review the relationship between poverty and student performance and, as appropriate, incorporate such relationship as an element in proposed criteria or guidelines for selecting schools or districts for awards under the outcomes-based learning assistance education recognition program.

**Sec. 15 was vetoed, see message at end of chapter.*

**NEW SECTION. Sec. 16. A new section is added to Title 28A RCW to read as follows:*

(1) The superintendent of public instruction shall develop by September 1, 1990, a model curriculum or curriculum guidelines for an outcomes-based health and physical education learning assistance education program. The purpose of the model curriculum or curriculum guidelines is to assist school districts in coordinating the current health and physical education requirements under Title 28A RCW and to assist school districts in the appropriate offering of those requirements to students enrolled in kindergarten through grade twelve. The model curriculum or curriculum guidelines shall be available for use at district's discretion.

(2) Every school district board of directors shall consider adopting an outcomes-based health and physical education program by September 1, 1991.

(3) School districts may adopt or modify the model curriculum or curriculum guidelines developed pursuant to subsection (1) of this section, develop a curriculum locally, or adopt or modify any other existing curriculum: PROVIDED, That no provision of this subsection or subsections (1) and (2) of this section shall be construed to authorize the development of school-based health clinics.

(4) For the purposes of this section the term "outcomes-based" means the establishment of skills and/or knowledge the district determines students should learn from the curriculum developed for their local outcomes-based health and physical education program.

*Sec. 16 was vetoed, see message at end of chapter.

PART VIII MISCELLANEOUS

NEW SECTION. Sec. 17. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to carry out the provisions of this act.

NEW SECTION. Sec. 18. The sum of thirty thousand dollars, or as much thereof as may be necessary, is appropriated from the general fund for the biennium ending June 30, 1991, to the superintendent of public instruction to carry out the purpose of section 15 of this act.

NEW SECTION. Sec. 19. Subchapter headings used in this act do not constitute any part of the law.

Passed the House April 20, 1989.

Passed the Senate April 14, 1989.

Approved by the Governor May 4, 1989, with the exception of sections 4, 15 and 16, which are vetoed.

Filed in Office of Secretary of State May 4, 1989.

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

"I am returning herewith, without my approval as to sections 4, 15, and 16, Engrossed Substitute House Bill No. 1444 entitled:

"AN ACT Relating to students at risk."

I requested this bill as a part of my effort to restructure our public education system and improve student performance. Most of the bill will improve the ability of the office of the Superintendent of Public Instruction and local school districts to respond to the diverse needs of students at risk of dropping out of high school.

Under the learning assistance program, as student's test scores improve, school districts receive less funds. Section 4 of the bill attempts to eliminate this disincentive. Unfortunately, a technical drafting error creates both confusion and potentially higher program costs.

Section 6 provides a broad prohibition on the use of tobacco products on public school property. I strongly support the goal of reducing the number of children who become addicted to cigarettes and other tobacco products which cause health problems. Although there have been some concerns raised about the ban, the provision does have an effective date of September 1, 1991. The delay will allow local districts to plan for implementation and allow the legislature the opportunity to address any technical concerns, such as whether it applies to property leased to private parties, before the effective date. Hence, I have decided not to remove this section.

Section 15 requires the Superintendent of Public Instruction to establish an awards program related to outcomes-based education programs. Although I support the concept of establishing an awards program for outcomes-based education programs, this section is overly specific and directive. I have retained the appropriation in section 18 to allow the Superintendent of Public Instruction to design an awards program for the recognition of schools in school districts that have shown significant and continuous improvement in student basic skills performance as well as other desired outcomes identified by the school district and community.

Section 16 requires the Superintendent of Public Instruction to develop a model curriculum for an outcomes-based health and physical education learning assistance education program. No funds are provided for this activity in the bill or in the House or Senate draft budgets.

With the exception of sections 4, 15, and 16, Engrossed Substitute House Bill No. 1444 is approved.*

CHAPTER 234

[Substitute House Bill No. 1254]

IMMUNITY FROM CIVIL LIABILITY—REPORTS OF POSSIBLE WRONGDOING TO GOVERNMENT AGENCIES

AN ACT Relating to immunity from civil liability; and adding new sections to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of sections 1 through 4 of this act is to protect individuals who make good-faith reports to appropriate governmental bodies.

NEW SECTION. Sec. 2. A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be

immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

****NEW SECTION. Sec. 3. If an agency fails to reasonably respond to a person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency, the person shall be immune from civil liability on claims arising from the communication of such complaint or information which the person genuinely and reasonably believed to be true. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.***

*Sec. 3 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4. In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under section 2 of this act may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under this act, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in section 2 of this act shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in section 2 of this act, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act are each added to chapter 4.24 RCW.

Passed the House April 22, 1989.

Passed the Senate April 22, 1989.

Approved by the Governor May 5, 1989, with the exception of section 3, which is vetoed.

Filed in Office of Secretary of State May 5, 1989.

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

"I am returning herewith, without my approval as to section 3, Substitute House Bill No. 1254, entitled:

"AN ACT Relating to immunity from civil liability."

This bill was introduced as a Governor and Attorney General request bill to address concerns which arose out of a specific factual situation. A citizen reported the violation of a tax law to a state agency, the agency took enforcement action, and the party who was alleged to have violated the law sued the citizen for slander and libel even though the information reported was factual. Truth is a defense to any slander or libel lawsuit; however, the request bill allows citizens to be represented and protected against the financial cost of defending against frivolous suits. Sections 1, 2 and

4 address this situation and provide appropriate protection so citizens can feel secure in reporting possible violations of the law to regulatory agencies. The agency then can verify the facts and take appropriate action.

Section 3 was added to Substitute House Bill No. 1254 late in the session and was not subject to thorough legislative discussion and standing committee review. It provides that if an agency fails to respond to a complaint regarding a matter of concern to the agency, the person filing the complaint would be immune from civil liability on claims arising from the communication of the complaint.

I understand that the intent of this section is to ensure that good faith citizen complaints are acted upon by governmental agencies by providing immunity from suit to people who may choose to go public with their concerns. That is an admirable purpose which I support. However, I am concerned that the language used in this section could be interpreted to mean that immunity would be conferred even when statements are made that go beyond the original communication to the agency, such as inferences made about the character of an individual. These claims may arise from the communication and therefore be subject to the immunity provisions. That broadened immunity from civil action is more than what is needed in these instances.

In addition, under section 3, if an agency failed to reasonably respond to a complaint, the complainant would be granted immunity to communicate to other persons information about a private individual that was actually false and damaging to the individual's reputation, as long as the complainant claimed he reasonably believed the information was true. Unfortunately, proving or in this case disproving, the complainant's state of mind is not easy. The injured individual would be precluded from taking action against the person who disseminated the false information.

Also, section 3 fails to indicate what is meant by "if an agency failed to reasonably respond to a complaint". Citizens often expect immediate responses to their complaints regardless of the complexity of the issue or the capacity of the agency to respond. The Legislature should discuss whether this kind of immunity to make false charges is good public policy or if additional safeguards or standards should be included before this provision becomes law.

With the exception of section 3, Substitute House Bill No. 1254 is approved."

CHAPTER 235

[House Bill No. 1189]

KOREAN CONFLICT MEMORIAL

AN ACT Relating to a veterans' memorial; adding new sections to chapter 40.14 RCW; and making an appropriation.

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

NEW SECTION. Sec. 1. A new section is added to chapter 40.14 RCW to read as follows:

The director of the department of veterans affairs shall coordinate the design, construction, and placement of a memorial within the state capitol grounds honoring Washington state residents who died or are "missing-in-action" in the Korean conflict.

NEW SECTION. Sec. 2. A new section is added to chapter 40.14 RCW to read as follows:

The director of the department of veterans affairs or the director's designee shall chair an advisory committee composed of seven members to include the director of the department of veterans affairs or the director's

designee, the secretary of state or the secretary's designee, the director of the department of general administration or the director's designee, and two members who are representatives of state veterans' organizations and who served in the Korean conflict, one appointed by the speaker of the house of representatives and one appointed by the president of the senate. In addition, two members who served in the Korean conflict will be appointed by the director of the department of veterans affairs. The advisory committee and the state capitol committee shall approve the design and placement of the memorial before construction begins.

NEW SECTION. Sec. 3. The sum of twenty-five thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the department of veteran affairs to carry out the purposes of this act.

Passed the House April 17, 1989.

Passed the Senate March 29, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 236

[House Bill No. 2129]

CULTURAL AND LINGUISTIC DIVERSITY ENCOURAGED

AN ACT Relating to diverse cultures and languages; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Diverse ethnic and linguistic communities have contributed to the social and economic prosperity of Washington state;

(2) It is the welcomed responsibility and opportunity of this state to respect and facilitate the efforts of all cultural, ethnic, and linguistic segments of the population to become full participants in Washington communities;

(3) This state's economic well-being depends heavily on foreign trade and international exchange and more than one out of six jobs is directly linked to foreign trade and international exchange;

(4) If Washington is to prosper in foreign trade and international exchange, it must have citizens that are multilingual and multicultural;

(5) While recognizing the value of a multilingual background, the state also encourages all citizens to become proficient in English to facilitate full participation of all groups into society and to promote cross-communication between multilingual groups; and

(6) The multilingual nature of communication that currently exists in this state should be promoted to build trust and understanding among all of its citizens.

Therefore, it shall be the policy of the state of Washington to welcome and encourage the presence of diverse cultures and the use of diverse languages in business, government, and private affairs in this state.

NEW SECTION. Sec. 2. Nothing in section 1 of this act creates any right or cause of action or adds to any existing right or cause of action nor may it be relied upon to compel the establishment of any program or special entitlement.

Passed the House March 14, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 237

[House Bill No. 1354]

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION—ORGANIZATION AND DUTIES

AN ACT Relating to the interagency committee for outdoor recreation; amending RCW 43.99.010, 43.99.020, 43.99.130, 43.99.142, 43.99.146, and 67.32.050; adding a new section to chapter 43.99 RCW; declaring an emergency; and providing an effective date.

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

Sec. 1. Section 1, chapter 5, Laws of 1965 and RCW 43.99.010 are each amended to read as follows:

(1) As Washington begins its second century of statehood, the legislature recognizes that renewed efforts are needed to preserve, conserve, and enhance the state's recreational resources. Rapid population growth and increased urbanization have caused a decline in suitable land for recreation and resulted in overcrowding and deterioration of existing facilities. Lack of adequate recreational resources directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves.

It is therefore the policy of the state and its agencies to preserve, conserve, and enhance recreational resources and open space. In carrying out this policy, the mission of the interagency committee for outdoor recreation and its staff is to (a) create and work actively for the implementation of a unified state-wide strategy for meeting the recreational needs of Washington's citizens, (b) represent and promote the interests of the state on recreational issues in concert with other state and local agencies and the governor, (c) encourage and provide interagency and regional coordination, and interaction between public and private organizations, (d) administer recreational grant-in-aid programs and provide technical assistance, and (e) serve as a repository for information, studies, research, and other data relating to recreation.

(2) Washington is uniquely endowed with fresh and salt waters rich in scenic and recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is a major support of its expanding tourist industry. Rising population, increased income and leisure time, and the rapid growth of boating and other water sports have greatly increased the demand for water related recreation, while waterfront land is rapidly rising in value and disappearing from public use. There is consequently an urgent need for the acquisition or improvement of waterfront land on fresh and salt water suitable for marine recreational use by Washington residents and visitors. To meet this need, it is necessary and proper that the portion of motor vehicle fuel taxes paid by boat owners and operators on fuel consumed in their watercraft and not reclaimed as presently provided by law should be expended for the acquisition or improvement of marine recreation land on the Pacific Ocean, Puget Sound, bays, lakes, rivers, reservoirs and other fresh and salt waters of the state.

Sec. 2. Section 2, chapter 5, Laws of 1965 as last amended by section 108, chapter 158, Laws of 1979 and RCW 43.99.020 are each amended to read as follows:

Definitions: As used in this chapter:

(1) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(2) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and shall also mean Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(3) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter 82.36 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(4) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water.

(5) "Committee" means the interagency committee for outdoor recreation.

(6) "Director" means the director of the interagency committee for outdoor recreation.

Sec. 3. Section 13, chapter 5, Laws of 1965 as last amended by section 2, chapter 206, Laws of 1981 and RCW 43.99.130 are each amended to read as follows:

When requested by the committee, members employed by the state shall furnish assistance to the committee from their departments for the analysis and review of proposed plans and projects, and such assistance shall be a proper charge against the appropriations to the several agencies represented on the committee. Assistance may be in the form of money, personnel, or equipment and supplies, whichever is most suitable to the needs of the committee.

~~((The committee shall employ a director and may employ an assistant director to serve at the pleasure of the committee and shall appoint such professional, technical, and clerical personnel and other assistants and employees as may be necessary to carry out the work of the committee.))~~

The director shall be appointed by, and serve at the pleasure of, the governor. The governor shall select the director from a list of three candidates submitted by the committee. However, the governor may request and the committee shall provide an additional list or lists from which the governor may select the director. The lists compiled by the committee shall not be subject to public disclosure. The director shall have background and experience in the areas of recreation management and policy. The director shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director shall appoint such personnel as may be necessary to carry out the duties of the committee. Not more than three employees appointed by the director shall be exempt from the provisions of chapter 41.06 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 43.99 RCW to read as follows:

The director shall have the following powers and duties:

(1) To supervise the administrative operations of the committee and its staff;

(2) To administer recreation grant-in-aid programs and provide technical assistance to state and local agencies;

(3) To prepare and update a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space. The plan shall be prepared in coordination with the office of the governor and the office of financial management, with participation of federal, state, and local agencies having recreational responsibilities, user groups, private sector interests, and the general public. The plan shall be submitted to the committee for review, and the committee shall submit its recommendations on the plan to the governor. The plan shall include, but is not limited to: (a) an inventory of current resources; (b) a forecast of recreational resource demand; (c) identification and analysis of actual and potential funding sources; (d) a process for broad scale information gathering; (e) an assessment of the capabilities and constraints, both internal and external to state government, that affect the ability of the state

to achieve the goals of the plan; (f) an analysis of strategic options and decisions available to the state; (g) an implementation strategy that is coordinated with executive policy and budget priorities; and (h) elements necessary to qualify for participation in or the receipt of aid from any federal program for outdoor recreation;

(4) To represent and promote the interests of the state on recreational issues and further the mission of the committee;

(5) Upon approval of the committee, to enter into contracts and agreements with private nonprofit corporations to further state goals of preserving, conserving, and enhancing recreational resources and open space for the public benefit and use;

(6) To appoint such technical and other committees as may be necessary to carry out the purposes of this chapter;

(7) To create and maintain a repository for data, studies, research, and other information relating to recreation in the state, and to encourage the interchange of such information;

(8) To encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public and private entities involved in the development and preservation of recreational resources; and

(9) To prepare the state trails plan, as required by RCW 67.32.050.

Sec. 5. Section 1, chapter 24, Laws of 1979 ex. sess. and RCW 43.99.142 are each amended to read as follows:

In addition to its other powers and duties the ((committee)) director is authorized to coordinate the preparation of a comprehensive guide of public parks and recreation sites in the state of Washington. Such guide may include one or more maps showing the locations of such public parks and recreation areas, and may also include information as to the facilities and recreation opportunities available. All state agencies providing public recreational facilities shall participate. Cooperation of federal agencies providing public recreational facilities within the state shall be solicited.

The ((committee)) director shall determine the costs of providing and distributing such a guide and pursue the most feasible means of paying the costs of initial production. The guide shall be sold for an amount to cover the reasonable production and distribution costs involved, and the ((committee)) director may contract with any state agency, local government agency, or private firm as otherwise allowed by law for any part of such production or distribution.

Sec. 6. Section 4, chapter 24, Laws of 1979 ex. sess. and RCW 43.99.146 are each amended to read as follows:

The ((committee)) director shall periodically review and have updated the guide authorized by RCW 43.99.142.

Sec. 7. Section 5, chapter 76, Laws of 1970 ex. sess. as amended by section 1, chapter 47, Laws of 1971 ex. sess. and RCW 67.32.050 are each amended to read as follows:

The (~~HAC~~) director shall prepare a state trails plan as part of the state-wide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

(1) Section 5, chapter 206, Laws of 1981, section 1, chapter 425, Laws of 1987 and RCW 43.99.115; and

(2) Section 4, chapter 62, Laws of 1967 ex. sess. and RCW 43.99.122.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on June 30, 1989.

Passed the House April 23, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 238

[House Bill No. 1395]

STATE INVESTMENT BOARD—CONFIDENTIALITY OF INFORMATION SUPPLIED TO

AN ACT Relating to the state investment board; amending RCW 42.30.110; and reenacting and amending RCW 42.17.310.

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

Sec. 1. Section 2, chapter 107, Laws of 1987, section 1, chapter 337, Laws of 1987, section 16, chapter 370, Laws of 1987, section 1, chapter 404, Laws of 1987, section 10, chapter 411, Laws of 1987 and RCW 42.17.310 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: PROVIDED, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: PROVIDED, FURTHER, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

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

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) ~~((Except as provided under section 2 of this 1987 act [1987 c 404 § 2],))~~ All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 2. Section 11, chapter 250, Laws of 1971 ex. sess. as last amended by section 3, chapter 389, Laws of 1987 and RCW 42.30.110 are each amended to read as follows:

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

(a) To consider matters affecting national security;

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

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

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

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

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

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject

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

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

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

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

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

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

Passed the House March 6, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 239

[Substitute Senate Bill No. 5759]
SCHOOL BREAKFAST PROGRAMS

AN ACT Relating to a school breakfast program; and creating new sections.

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

NEW SECTION. Sec. 1. The superintendent of public instruction is directed to conduct a study of school lunch programs to determine reasons why some schools are not currently participating in the national school lunch program. The report shall include an estimate of the number of students in each of these schools who would be eligible for free or reduced-price lunches if they were available. The superintendent of public instruction shall submit to the legislature prior to January 15, 1990, a report on the results of its study, including recommendations on ways of increasing school participation in the school lunch program.

NEW SECTION. Sec. 2. (1) For the purposes of this section:

(a) "Free or reduced-price lunches" means lunches served by a school district that qualify for federal reimbursement as free or reduced-price lunches under the national school lunch program.

(b) "School breakfast program" means a program meeting federal requirements defined in 42 U.S.C. Sec. 1773.

(c) "Severe-need school" means a school that qualifies for a severe-need school reimbursement rate from federal funds for school breakfasts served to children from low-income families.

(2) School districts shall be required to develop and implement plans for a school breakfast program in severe-need schools, pursuant to the schedule in this section. For the second year prior to the implementation of the district's school breakfast program, and for each subsequent school year, each school district shall submit data enabling the superintendent of public instruction to determine which schools within the district will qualify as severe-need schools. In developing its plan, each school district shall consult with an advisory committee including school staff and community members appointed by the board of directors of the district.

(3) Using district-wide data on school lunch participation during the 1988-89 school year, the superintendent of public instruction shall adopt a schedule for implementation of school breakfast programs in severe-need schools as follows:

(a) School districts where at least forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1990. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1990-91 school year and in each school year thereafter.

(b) School districts where at least twenty-five but less than forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1991. Each such district shall implement a school breakfast program in all

severe-need schools no later than the second day of school in the 1991-92 school year and in each school year thereafter.

(c) School districts where less than twenty-five percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1992. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1992-93 school year and in each school year thereafter.

(d) School districts that did not offer a school lunch program in the 1988-89 school year are encouraged to implement such a program and to provide a school breakfast program in all severe-need schools when eligible.

(4) The requirements in this section shall lapse if the federal reimbursement rate for breakfasts served in severe-need schools is eliminated.

(5) Students who do not meet family-income criteria for free breakfasts shall be eligible to participate in the school breakfast programs established under this section, and school districts may charge for the breakfasts served to these students. School breakfast programs established under this section shall be supported entirely by federal funds and commodities, charges to students, and other local resources available for this purpose, and shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the Constitution.

NEW SECTION. Sec. 3. The superintendent of public instruction shall conduct a study of the costs and feasibility of expanding the school breakfast program to include schools where more than twenty-five but less than forty percent of lunches served are free or reduced-price lunches. The study shall consider the total cost of the program, including but not limited to food costs, staff salaries and benefits, and additional pupil transportation costs. The superintendent of public instruction shall submit to the legislature prior to January 15, 1992, a report on the results of this study, including recommendations on whether to expand the school breakfast program to include these schools.

Passed the Senate April 22, 1989.

Passed the House April 21, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 240

[Substitute House Bill No. 1104]

MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM

AN ACT Relating to the motor vehicle inspection and maintenance program; amending RCW 46.16.015, 70.120.020, 70.120.070, 70.120.110, and 70.120.120; adding new sections to

chapter 70.120 RCW; creating new sections; repealing RCW 70.120.030, 70.120.040, 70.120.050, and 70.120.060; repealing section 17, chapter 163, Laws of 1979 ex. sess. (uncodified); prescribing penalties; providing an expiration date; and providing an effective date.

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

Sec. 1. Section 111, chapter 7, Laws of 1985 and RCW 46.16.015 are each amended to read as follows:

(1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under chapter 70.120 RCW ((70.120.040)), for any year in which the vehicle is required to be tested under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance (~~issued pursuant to RCW 70.120.060 or 70.120.080~~) or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW ((70.120.070)); or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within ninety days of the date of application for the vehicle license or license renewal. Certificates for fleet vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles (~~fifteen years old or older~~) with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled exclusively by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Motor vehicles powered by diesel engines;

(g) Farm vehicles as defined in RCW 46.04.181;

(h) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; or

(i) Motor vehicles exempted by the director of the department of ecology.

The provisions of subparagraph (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of licensing shall mail to each owner of a vehicle registered within an emission contributing area a notice regarding the boundaries of the area and restrictions established under this section that apply to vehicles registered in such areas. The information for the notice shall be supplied to the department of licensing by the department of ecology. Such a notice shall be mailed to the owner ninety days prior to the expiration date of the owner's motor vehicle license.

NEW SECTION. Sec. 2. VEHICLE EMISSION STANDARDS—DESIGNATION OF NONCOMPLIANCE AREAS AND EMISSION CONTRIBUTING AREAS. The director:

(1) Shall adopt motor vehicle emission standards to ensure that no less than seventy percent of the vehicles tested comply with the standards.

(2) Shall designate a geographic area as being a "noncompliance area" for motor vehicle emissions if (a) the department's analysis of the data, recorded for a period of no less than one year, at the monitoring sites indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the contaminant being monitored at the sites is motor vehicle emissions.

(3) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(4) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et. seq.), (b) the nonattainment area encompasses portions of both Washington and the adjacent state, and (c) it can be proven that vehicles registered in this state contribute significantly to the violation of the

federal air quality standards for ozone in the adjacent state's portion of the nonattainment area.

(5) Shall designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(6) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions in areas where emission control inspections are not required.

NEW SECTION. Sec. 3. NONCOMPLIANCE AREAS—ANNUAL REVIEW. (1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16.015 no longer applied.

NEW SECTION. Sec. 4. MOTOR VEHICLE INSPECTIONS REQUIRED—FEES—RESULTS—CERTIFICATE OF COMPLIANCE.

(1) The department shall administer a system for biennial inspection of emissions of all motor vehicles registered within the boundaries of each emission contributing area. Persons residing within the boundaries of an emission contributing area shall register their motor vehicle within that area, unless business reasons require registration outside the area. Requests for exemption from inspection for business reasons shall be reviewed and approved by the director.

(2) The director shall:

(a) Adopt procedures for conducting emission tests for motor vehicles. The tests shall include idle and high revolution per minute tests.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting the vehicle emission tests authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or

operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1)(a) if the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards; or
- (d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable state-wide or throughout an emission contributing area and shall be no greater than eighteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection test. If the inspected vehicle's emissions comply with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle's emissions do not comply with those standards, one retest of the vehicle's emission shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles biennially to ensure that the vehicle's emissions comply with the emission standards established by the director. A report of the results of the tests shall be submitted to the department.

Sec. 5. Section 2, chapter 163, Laws of 1979 ex. sess. and RCW 70.120.020 are each amended to read as follows:

(1) The department shall conduct the following programs in a manner that will enhance the successful implementation of the air pollution control system established for motor vehicles by this chapter:

- (a) A voluntary motor vehicle emissions inspection program;
- (b) A public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission; and

(c) A public notification program identifying the geographic areas of the state that are designated as being noncompliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department, the superintendent of public instruction, and the state board for community college education shall develop cooperatively, after consultation with automotive trades joint apprenticeship committees approved in accordance with RCW 49.04.040, a program for granting certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from private organizations which meet the requirements established in this subsection.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section.

Sec. 6. Section 7, chapter 163, Laws of 1979 ex. sess. as amended by section 4, chapter 176, Laws of 1980 and RCW 70.120.070 are each amended to read as follows:

(1) Any person:

~~((1))~~ (a) Whose motor vehicle is tested pursuant to ~~((RCW 70.120.060))~~ this chapter and fails to comply with the emission standards established for the vehicle; and

~~((2))~~ (b) Who, following such a test, expends more than fifty dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs ~~((and/or parts))~~ solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

~~((3))~~ (c) Whose vehicle ~~((is inspected again but again))~~ fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

(d) To receive the certificate, the person must document ~~((the expenditure and the purpose of the expenditure))~~ compliance with (b) and (c) of this subsection to the satisfaction of the department.

(2) Persons who fail the initial tests shall be provided with information regarding the availability of federal warranties and certified emission specialists.

Sec. 7. Section 12, chapter 163, Laws 1979 ex. sess. as amended by section 131, chapter 7, Laws of 1985 and RCW 70.120.110 are each amended to read as follows:

(1)(a) Certificates of compliance and acceptance constitute official forms. False statements made thereon or made to secure such certificates are punishable pursuant to RCW 9A.72.040 and the certificates shall bear notice to that effect.

(b) Certificates of compliance and certificates of acceptance may be issued only in the manner authorized by ~~((RCW 70.120.060, 70.120.070, and 70.120.080))~~ this chapter.

(2) A person who avoids inspection requirements as provided for in section 4(1) of this act is subject to a civil penalty not to exceed one hundred dollars.

Sec. 8. Section 13, chapter 163, Laws of 1979 ex. sess. and RCW 70.120.120 are each amended to read as follows:

The director ~~((of the department of ecology))~~ shall adopt rules implementing and enforcing this chapter and RCW ((70.120.010 through 70.120.100;)) 46.16.015(2)(g) ((and 70.120.110)) in accordance with chapter ~~((34.04))~~ 34.05 RCW. Notwithstanding the provisions of chapter ~~((34.04))~~ 34.05 RCW, any rule implementing and enforcing ~~((RCW 70.120.010 through 70.120.100, 46.16.015(2)(g), and 70.120.110))~~ section 2(5) of this act may not be adopted until it has been submitted to the standing committees on ecology of the house of representatives and senate for review and approval. The standing committees shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in section 2(5) of this act, alternative plans for traffic rerouting and traffic bans that may have been prepared by local municipal corporations for the purpose of satisfying federal emission guidelines.

NEW SECTION. Sec. 9. EXPIRATION DATE. This chapter expires January 1, 1993, unless extended by law for an additional fixed period of time.

NEW SECTION. Sec. 10. DEPARTMENT STUDIES. (1) The department shall identify expected carbon monoxide emission trends over the next five years after the effective date of this act without the motor vehicle emission program and report to the appropriate standing committees of the legislature by January 1, 1991.

(2) The department shall examine available testing data to determine vehicle subpopulations and incremental emission increases associated with subpopulations failing the emission test. This information shall be reported to the appropriate standing committees of the legislature by January 1, 1992.

NEW SECTION. Sec. 11. CAPTIONS NOT LAW. Section headings as used in this act do not constitute any part of law.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

(1) Section 3, chapter 163, Laws of 1979 ex. sess., section 130, chapter 7, Laws of 1985 and RCW 70.120.030;

(2) Section 4, chapter 163, Laws of 1979 ex. sess., section 2, chapter 176, Laws of 1980 and RCW 70.120.040;

(3) Section 5, chapter 163, Laws of 1979 ex. sess. and RCW 70.120-.050;

(4) Section 6, chapter 163, Laws of 1979 ex. sess., section 3, chapter 176, Laws of 1980 and RCW 70.120.060; and

(5) Section 17, chapter 163, Laws of 1979 ex. sess. (uncodified).

NEW SECTION. Sec. 13. Sections 2 through 4 and 9 of this act are added to chapter 70.120 RCW.

NEW SECTION. Sec. 14. This act shall take effect January 1, 1990.

Passed the House April 17, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 241

[Substitute House Bill No. 1007]
WATER SKIING SAFETY

AN ACT Relating to safety in water skiing; adding a new section to chapter 88.12 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 88.12 RCW to read as follows:

(1) The purpose of this section is to promote safety in water skiing on the waters of Washington state, provide a means of ensuring safe water skiing and promote the enjoyment of water skiing.

(2) When used in this section, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(a) "Operator" means the individual in physical control of the recreational boat.

(b) "Observer" means the individual riding in the recreational boat who shall be responsible for observing the water skier at all times. The observer and the operator shall not be the same person. The observer shall be at least ten years of age.

(c) "Recreational boat" means any vessel manufactured or used primarily for noncommercial use; or leased, rented, or chartered to another for the latter's noncommercial use.

(d) "Waters of Washington state" means any waters within the territorial limits of Washington state.

(3) No recreational boat which has in tow a person or persons on water skis, or similar contrivance shall be operated on any waters of Washington state unless such craft shall be occupied by at least an operator and an observer. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons fall into the water, and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright red color, measuring twelve inches on each side, mounted on a handle not less than twenty-four inches long and displayed as to be visible from every direction. This subsection does not apply to a United States coast guard approved recreational boat, the design of which makes no provision for carrying an operator or any other person on board, and that is actually operated by the person or persons being towed.

(4) No person shall engage or attempt to engage in water skiing without wearing an adequate and effective United States coast guard approved type I, II, III, or V personal floatation device in good and serviceable condition and of appropriate size, or a wet suit specifically designed by a manufacturer for that purpose and capable of floating the water skier.

(5) No person shall engage or attempt to engage in water skiing, or operate any vessel to tow a water skier, on the waters of Washington state during the period from one hour after sunset until one hour prior to sunrise.

(6) No person engaged in water skiing shall conduct himself or herself in a negligent manner that endangers, or is likely to endanger, any person or property.

(7) The requirements of subsections (3), (4), and (5) of this section shall not apply to water skiers and boat operators engaged in water ski tournaments, competitions, or exhibitions that have been authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

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

Passed the House April 17, 1989.

Passed the Senate March 29, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 242

[Substitute House Bill No. 1115]

LEGEND DRUGS—PURCHASE BY HUMANE SOCIETIES AND ANIMAL CONTROL AGENCIES

AN ACT Relating to legend drugs; and adding a new section to chapter 69.41 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 69.41 RCW to read as follows:

Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law.

Passed the House April 17, 1989.

Passed the Senate April 10, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 243

[Substitute Senate Bill No. 5128]

LOCAL IMPROVEMENT DISTRICTS—ASSESSMENTS—NOTICE OF POSSIBLE RATE VARIATIONS

AN ACT Relating to local improvements; amending RCW 35.43.120, 35.43.140, 35.43.150, 79.44.003, 79.44.040, and 79.44.050; adding a new section to chapter 36.69 RCW; adding a new section to chapter 36.88 RCW; adding a new section to chapter 36.94 RCW; adding a new section to chapter 52.20 RCW; adding a new section to chapter 53.08 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 56.20 RCW; adding a new section to chapter 57.16 RCW; adding a new section to chapter 79.44 RCW; and adding a new section to chapter 87.03 RCW.

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

Sec. 1. Section 35.43.120, chapter 7, Laws of 1965 as last amended by section 1, chapter 323, Laws of 1981 and RCW 35.43.120 are each amended to read as follows:

Any local improvement may be initiated upon a petition signed by the owners of property aggregating a majority of the area within the proposed district. The petition must briefly describe: (1) The nature of the proposed improvement, (2) the territorial extent of the proposed improvement, ~~((and))~~ (3) what proportion of the area within the proposed district is owned by the petitioners as shown by the records in the office of the county auditor, and (4) the fact that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property.

If any of the property within the area of the proposed district stands in the name of a deceased person, or of any person for whom a guardian has been appointed and not discharged, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property on the petition. The petition must be filed with the clerk or with such other officer as the city or town by charter or ordinance may require.

Sec. 2. Section 35.43.140, chapter 7, Laws of 1965 as last amended by section 29, chapter 469, Laws of 1985 and RCW 35.43.140 are each amended to read as follows:

Any local improvement to be paid for in whole or in part by the levy and collection of assessments upon the property within the proposed improvement district may be initiated by a resolution of the city or town council or other legislative authority of the city or town, declaring its intention to order the improvement, setting forth the nature and territorial extent of the improvement, containing a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds

to the property, and notifying all persons who may desire to object thereto to appear and present their objections at a time to be fixed therein.

In the case of trunk sewers and trunk water mains the resolution must describe the routes along which the trunk sewer, subsewer and branches of trunk water main and laterals are to be constructed.

In case of dikes or other structures to protect the city or town or any part thereof from overflow or to open, deepen, straighten, or enlarge watercourses, waterways and other channels the resolution must set forth the place of commencement and ending thereof and the route to be used.

In the case of auxiliary water systems, or extensions thereof or additions thereto for protection of the city or town or any part thereof from fire, the resolution must set forth the routes along which the auxiliary water system or extensions thereof or additions thereto are to be constructed and specifications of the structures or works necessary thereto or forming a part thereof.

The resolution shall be published in at least two consecutive issues of the official newspaper of the city or town, the first publication to be at least fifteen days before the day fixed for the hearing.

The hearing herein required may be held before the city or town council, or other legislative authority, or before a committee thereof. The legislative authority of a city having a population of fifteen thousand or more may designate an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the legislative authority for final action.

Sec. 3. Section 35.43.150, chapter 7, Laws of 1965 as amended by section 2, chapter 303, Laws of 1983 and RCW 35.43.150 are each amended to read as follows:

Notice of the hearing upon a resolution declaring the intention of the legislative authority of a city or town to order an improvement shall be given by mail at least fifteen days before the day fixed for hearing to the owners or reputed owners of all lots, tracts, and parcels of land or other property to be specially benefited by the proposed improvement, as shown on the rolls of the county assessor, directed to the address thereon shown.

The notice shall set forth the nature of the proposed improvement, the estimated cost, a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property, and the estimated benefits of the particular lot, tract, or parcel.

NEW SECTION. Sec. 4. A new section is added to chapter 36.69 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment

estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 5. A new section is added to chapter 36.88 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a county road improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 6. A new section is added to chapter 36.94 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district or utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 7. A new section is added to chapter 52.20 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 8. A new section is added to chapter 53.08 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 9. A new section is added to chapter 54.16 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local utility district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property.

NEW SECTION. Sec. 10. A new section is added to chapter 56.20 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a utility local improvement district shall contain a statement that actual assessments may vary from

assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 11. A new section is added to chapter 57.16 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district or utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

NEW SECTION. Sec. 12. A new section is added to chapter 87.03 RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

Sec. 13. Section 1, chapter 20, Laws of 1963 as amended by section 14, chapter 234, Laws of 1971 ex. sess. and RCW 79.44.003 are each amended to read as follows:

As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water districts;
- (7) Sewer districts;
- (8) Counties; and
- (9) Any municipal corporation or public agency having power to levy local improvement or other assessments, rates, or charges which by statute are expressly made applicable to lands of the state.

Sec. 14. Section 4, chapter 164, Laws of 1919 as last amended by section 177, chapter 151, Laws of 1979 and RCW 79.44.040 are each amended to read as follows:

Notice of the intention to make such improvement, or impose any assessment, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed (~~for said improvement~~), shall be forwarded by registered or certified mail to the director of financial management and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date

fixed for hearing on the resolution or petition initiating said ~~((improvement))~~ assessment. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas and state tidelands until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to said tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of said improvement against any leasehold, contractual or possessory interest in and to any tideland or harbor area owned by the state: **PROVIDED, HOWEVER,** That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of said port district.

Sec. 15. Section 5, chapter 164, Laws of 1919 as last amended by section 178, chapter 151, Laws of 1979 and RCW 79.44.050 are each amended to read as follows:

Upon the approval and confirmation of the assessment roll ~~((for any local improvement))~~ ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the director of financial management and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, in accordance with such rules and regulations as the director of financial management may provide, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll ~~((for the cost of such improvement))~~, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case said land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his office of the cost of such ~~((improvement))~~ assessment upon the lands occupied, used, or under the jurisdiction of his agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same ~~((improvement))~~ assessing district.

NEW SECTION. Sec. 16. A new section is added to chapter 79.44 RCW to read as follows:

As used in this chapter, "assessment" shall mean any assessment, rate or charge levied, assessed, imposed, or charged by any assessing district as

defined in RCW 79.44.003, and which assessments, rates or charges by statute are expressly made applicable to lands of the state.

Passed the Senate April 18, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 244

[Substitute House Bill No. 1386]

COUNTIES—SMALL WORKS ROSTER

AN ACT Relating to the creation of small works rosters by counties; reenacting and amending RCW 36.32.250; and adding new sections to chapter 36.32 RCW.

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

NEW SECTION. Sec. 1. A county may use a small works roster and award contracts under sections 2 through 4 of this act for any project for which the estimated cost is one hundred thousand dollars or less.

NEW SECTION. Sec. 2. Each county may maintain a small works roster which shall be comprised of all contractors requesting to be on the roster and who are, where required by law, properly licensed or registered to perform work in the state of Washington. Whenever possible, the county shall actively solicit participation by women and minority contractors.

NEW SECTION. Sec. 3. Whenever construction is done by contract for which the estimated cost is one hundred thousand dollars or less and the county uses a small works roster, the county shall invite proposals from appropriate contractors on the small works roster. Such invitation shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Whenever possible, not less than five separate appropriate contractors shall be requested to submit proposals on any individual contract.

Once a contractor on the small works roster has been offered an opportunity to submit a proposal, that contractor shall not be offered another opportunity on any contract until all other appropriate contractors, including minority and women contractors, have been afforded an opportunity to submit a proposal on a contract.

NEW SECTION. Sec. 4. When awarding such a contract for work, the estimated cost of which is one hundred thousand dollars or less, the county shall award the contract to the contractor submitting the lowest responsible proposal.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act are each added to chapter 36.32 RCW.

Sec. 6. Section 36.32.250, chapter 4, Laws of 1963 as last amended by section 9, chapter 169, Laws of 1985 and by section 1, chapter 369, Laws of 1985 and RCW 36.32.250 are each reenacted and amended to read as follows:

No contract, lease, or purchase may be entered into by the county legislative authority or by any elected or appointed officer of such county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection, and an advertisement thereof stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, or material, equipment, or service to be purchased, and that specifications therefor may be seen at the office of the clerk of the county legislative authority, shall be published in the county official newspaper: PROVIDED, That advertisements for public works contracts for construction, alteration, repair, or improvement of public facilities shall be additionally published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done: AND PROVIDED FURTHER, That if the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done publication of an advertisement of the applicable specifications in the county official newspaper only shall be sufficient. Such advertisements shall be published at least once in each week for two consecutive weeks prior to the last date upon which bids will be received and as many additional publications as shall be determined by the county legislative authority. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in said advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work, lease, or purchase shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles or equipment to be purchased or leased. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative

authority. In the letting of any contract, lease, or purchase involving less than ~~((three thousand five hundred))~~ ten thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Notice of intention to let contracts or to enter into lease agreements involving amounts exceeding one thousand dollars but less than ~~((three thousand five hundred))~~ ten thousand dollars, shall be posted by the county legislative authority on a bulletin board in its office not less than three days prior to making such lease or contract. For advertisement and competitive bidding to be dispensed with as to purchases between one thousand and ~~((three thousand five hundred))~~ ten thousand dollars, the county legislative authority must authorize by resolution a county procedure for securing telephone or written quotations, or both, from enough vendors to assure establishment of a competitive price and for awarding such contracts for purchase of materials, equipment, or services to the lowest responsible bidder. The procedure shall include the annual establishment of an array of general categories in which such contracts, leases, or purchases are anticipated. A roster shall be developed for each category, consisting of all potential bidders who have requested to be included on the roster. The county shall invite proposals from all vendors listed on the appropriate roster for each purchase between one thousand and ten thousand dollars. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry. Wherever possible, supplies shall be purchased in quantities for a period of at least three months, and not to exceed one year. Supplies generally used throughout the various departments shall be standardized insofar as possible, and may be purchased and stored for general use by all of the various departments which shall be charged for the supplies when withdrawn from the purchasing department.

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

Passed the House April 15, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 245

[Substitute House Bill No. 1415]

STATE COLLEGES AND UNIVERSITIES—TUITION—DETERMINATION OF RATE

AN ACT Relating to tuition fees; amending RCW 28B.15.402 and 28B.15.527; reenacting and amending RCW 28B.15.070 and 28B.15.076; and creating a new section.

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

Sec. 1. Section 7, chapter 257, Laws of 1981 as last amended by section 24, chapter 390, Laws of 1985 and RCW 28B.15.402 are each amended to read as follows:

Tuition fees and services and activities fees at the regional universities and The Evergreen State College for other than summer quarters or semesters shall be as follows:

(1) For full time resident undergraduate students and all other full time resident students not in graduate study programs, the total tuition fees shall be one-fourth of the per student undergraduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be seventy-six dollars and fifty cents.

(2) For full time resident graduate students, the total tuition fees shall be twenty-three percent of the per student graduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year ((thereafter)) shall be seventy-six dollars and fifty cents.

(3) For full time nonresident undergraduate students and all other full time nonresident students not in graduate study programs, the total tuition fees shall be one hundred percent of the per student undergraduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be two hundred and ninety-five dollars and fifty cents.

(4) For full time nonresident graduate students, the total of tuition fees shall be seventy-five percent of the per student graduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be two hundred and ninety-five dollars and fifty cents.

(5) The boards of trustees of each of the regional universities and The Evergreen State College shall charge and collect equally from each of the students registering at the particular institution and included in subsections (1) through (4) hereof a services and activities fee which for each year of the 1981-83 biennium shall not exceed one hundred eighty-four dollars and fifty cents. In subsequent biennia the board of trustees may increase the existing fee, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the percentage increase in tuition fees authorized in subsection (1) above: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(6) Notwithstanding the provisions of RCW 28B.15.067, for the 1989-91 biennium the undergraduate and graduate cost relationship developed by

the 1987 cost study for Central Washington University shall be used to establish tuition fees for the regional universities and The Evergreen State College.

NEW SECTION. Sec. 2. (1) The higher education coordinating board, with cooperation from the institutions of higher education, shall conduct a full review and analysis of the accuracy and consistency of the educational costs study. The board shall report to the legislature by December 1990, outlining its findings and making recommendations upon establishing a modified tuition fees structure based upon educational costs.

(2) The board shall conduct a full analysis and comparison of the educational costs at the University of Washington and Washington State University. The board shall also perform a comparison of the tuition fees charged at the University of Washington and Washington State University with tuition at their respective peer institutions. The board will provide recommendations on whether different levels of tuition fees should be charged at each of the state research universities.

Sec. 3. Section 7, chapter 322, Laws of 1977 ex. sess. as last amended by section 65, chapter 370, Laws of 1985 and by section 16, chapter 390, Laws of 1985 and RCW 28B.15.070 are each reenacted and amended to read as follows:

(1) The house and senate committees responsible for higher education shall develop, in cooperation with the higher education coordinating board (~~and~~), the respective fiscal committees of the house and senate, the office of financial management, and the state institutions of higher education by December of (~~each odd-numbered~~) every fourth year beginning in 1989, definitions, criteria, and procedures for determining the undergraduate and graduate educational costs for the state universities, regional universities, and community colleges upon which tuition fees will be based. In the event that no action is taken or disagreement exists between the committees as of that date, the recommendations of the board shall be deemed to be approved.

(2) The state institutions of higher education in cooperation with the higher education coordinating board shall perform an educational cost study pursuant to subsection (1) of this section. The study shall be conducted based on every fourth academic year beginning with 1989-90. Institutions shall complete the studies within one year of the end of the study year and report the results to the higher education coordinating board for consolidation, review, and distribution.

(3) In order to conduct the study required by subsection (2) of this section, the higher education coordinating board, in cooperation with the institutions of higher education, shall develop a methodology that requires the collection of comparable educational cost data, which utilizes a faculty activity analysis or similar instrument.

Sec. 4. Section 4, chapter 257, Laws of 1981 as last amended by section 66, chapter 370, Laws of 1985 and by section 17, chapter 390, Laws of 1985 and RCW 28B.15.076 are each reenacted and amended to read as follows:

The higher education coordinating board shall determine and transmit amounts constituting approved undergraduate and graduate educational costs to the several boards of regents and trustees of the state institutions of higher education by November 10 of each even-numbered year except the year 1990 for which the transmittal shall be made by December 17. Tuition fees shall be based on such costs in accordance with the provisions of this chapter.

Sec. 5. Section 3, chapter 12, Laws of 1987 and RCW 28B.15.527 are each amended to read as follows:

The boards of trustees of the community colleges may waive the non-resident portion of tuition fees for undergraduate students of foreign nations as follows:

(1) Priority in the awarding of waivers shall be given to students on academic exchanges and students participating in special programs recognized through formal agreements between states, cities, or institutions;

(2) The waiver programs under this section shall promote reciprocal placements and waivers in foreign nations for Washington residents. The number of foreign students granted resident tuition through this program shall not exceed the number of that institution's own students enrolled in approved study programs abroad during the same period;

(3) No reciprocal placements shall be required for up to thirty students participating in the Georgetown University scholarship program funded by the United States agency for international development;

(4) Participation shall be limited to one hundred full-time foreign students each year.

Passed the House April 18, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 246

[Senate Bill No. 5466]

STATE BUILDING CODE COUNCIL

AN ACT Relating to the state building code council; amending RCW 19.27.060, 19.27.070, 36.21.070, and 36.21.080; adding new sections to chapter 19.27 RCW; and repealing RCW 36.21.040, 36.21.050, and 36.21.060.

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

Sec. 1. Section 6, chapter 96, Laws of 1974 ex. sess. as last amended by section 12, chapter 462, Laws of 1987 and RCW 19.27.060 are each amended to read as follows:

(1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code. No amendment to a code enumerated in RCW 19.27.031 that affects single family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b). Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(3) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single family or multifamily residential buildings: PROVIDED, That in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code.

(4) The provisions of this chapter shall not apply to any building four or more stories high with a B occupancy as defined by the uniform building code, 1982 edition, and with a city fire insurance rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7) (a) Effective one year after the effective date of this section, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost

of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to the effective date of this section, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection.

Sec. 2. Section 7, chapter 96, Laws of 1974 ex. sess. as last amended by section 7, chapter 505, Laws of 1987 and RCW 19.27.070 are each amended to read as follows:

There is hereby established a state building code council to be appointed by the governor.

(1) The state building code council shall consist of fifteen members, two of whom shall be county elected legislative body members or elected executives and two of whom shall be city elected legislative body members or mayors. One of the members shall be a local government building code enforcement official and one of the members shall be a local government fire service official. Of the remaining nine members, one member shall represent general construction, specializing in commercial and industrial building construction; one member shall represent general construction, specializing in residential and multifamily building construction; one member shall represent the architectural design profession; one member shall represent the structural engineering profession; one member shall represent the mechanical engineering profession; one member shall represent the construction building trades; one member shall represent manufacturers, installers, or suppliers of building materials and components; one member shall be a person with a physical disability and shall represent the disability community; and one member shall represent the general public. At least six of these fifteen members shall reside east of the crest of the Cascade mountains. The council shall include ~~((an employee of the office of the insurance commissioner))~~; Two members of the house of representatives appointed by the speaker of the house, one from each caucus; two members of the senate appointed by the president of the senate, one from each caucus; and an employee of the electrical division of the department of labor and industries, as ex officio, nonvoting members with all other privileges and rights of membership. Terms of office shall be for three years. The council shall elect a member to serve as chair of the council for one-year terms of office. Any member who is appointed by virtue of being an elected official or holding public employment shall be removed from the council if he or she ceases being such an elected official or holding such public employment. Before making any appointments to the building code council, the governor shall seek nominations from recognized organizations which represent the entities or interests listed in this subsection. Members serving on the council on July

28, 1985, may complete their terms of office. Any vacancy shall be filled by alternating appointments from governmental and nongovernmental entities or interests until the council is constituted as required by this subsection.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department of community development shall provide administrative and clerical assistance to the building code council.

Sec. 3. Section 36.21.070, chapter 4, Laws of 1963 as amended by section 1, chapter 134, Laws of 1987 and RCW 36.21.070 are each amended to read as follows:

Upon receipt of ~~((such))~~ a copy of a building permit, the county assessor shall, within twelve months of the date of issue of such permit, proceed to make a physical appraisal of the building or buildings covered by the permit.

Sec. 4. Section 36.21.080, chapter 4, Laws of 1963 as last amended by section 5, chapter 319, Laws of 1987 and RCW 36.21.080 are each amended to read as follows:

The county assessor is authorized to place any property ~~((under the provisions of RCW 36.21.040 through 36.21.080))~~ that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed valuation of the property ((under the provisions of RCW 36.21.040 through 36.21.080)) shall be considered as of July 31st of that year.

NEW SECTION. Sec. 5. A new section is added to chapter 19.27 RCW to read as follows:

A copy of any permit obtained under the state building code for construction or alteration work of a total cost or fair market value in excess of five hundred dollars, shall be transmitted by the issuing authority to the county assessor of the county where the property on which the construction or alteration work is located. The building permit shall contain the county assessor's parcel number.

NEW SECTION. Sec. 6. A new section is added to chapter 19.27 RCW to read as follows:

Every month a copy of the United States department of commerce, bureau of the census' "report of building or zoning permits issued and local public construction" or equivalent report shall be transmitted by the governing bodies of counties and cities to the department of community development.

NEW SECTION. Sec. 7. A new section is added to chapter 19.27 RCW to read as follows:

Any county of the seventh class that had in effect on July 1, 1985, an ordinance or resolution authorizing and regulating the construction of owner-built residences may reenact such an ordinance or resolution if the ordinance or resolution is reenacted before September 30, 1989. After reenactment, the county shall transmit a copy of the ordinance or resolution to the state building code council.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

- (1) Section 36.21.040, chapter 4, Laws of 1963 and RCW 36.21.040;
 - (2) Section 36.21.050, chapter 4, Laws of 1963 and RCW 36.21.050;
- and
- (3) Section 36.21.060, chapter 4, Laws of 1963, section 1, chapter 318, Laws of 1985 and RCW 36.21.060.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 247

[Substitute House Bill No. 1337]

OVER-THE-COUNTER MEDICATIONS—IMPRINTING

AN ACT Relating to imprinting over-the-counter medications; adding a new chapter to Title 69 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature of the state of Washington finds that:

- (1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;
- (2) Modern treatment is dependent upon knowing the ingredients of the ingestant;
- (3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;
- (4) Although over-the-counter medications usually constitute a lower order of risk to ingestees, treatment after overdose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;
- (5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter.

NEW SECTION. Sec. 2. (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer of the medication.

NEW SECTION. Sec. 3. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale.

NEW SECTION. Sec. 4. Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms.

NEW SECTION. Sec. 5. (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance.

NEW SECTION. Sec. 6. The board shall have authority to promulgate rules for the enforcement and implementation of this chapter.

NEW SECTION. Sec. 7. All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1993, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1994, unless such over-the-counter medication complies with the imprinting requirements of this chapter.

NEW SECTION. Sec. 8. The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69, RCW (sections 2 through 9 of this act) on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

NEW SECTION. Sec. 9. Before January 1, 1993, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter, which governs the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system must be the same or earlier than the dates of implementation set out in the state system. If the board determines that the federal system is substantially equivalent to the state system, this chapter will cease to exist on January 1, 1993. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented.

NEW SECTION. Sec. 10. Sections 2 through 9 of this act shall constitute a new chapter in Title 69 RCW.

Passed the House April 17, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 248

[Substitute Senate Bill No. 5191]

GOOD-TIME CREDIT—UNIFORM APPLICATION

AN ACT Relating to uniform application of good-time credit statutes; amending RCW 70.48.210; reenacting and amending RCW 9.94A.150; adding new sections to chapter 9.92 RCW; and repealing RCW 9.92.150.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.92 RCW to read as follows:

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 facility. The earned early release time shall be for good behavior and good performance as determined by the facility. In no case may the aggregate earned early release time exceed one-third of the total sentence.

Sec. 2. Section 15, chapter 137, Laws of 1981 as last amended by section 1, chapter 3, Laws of 1988 and by section 3, chapter 153, Laws of 1988 and RCW 9.94A.150 are each reenacted and amended to read as follows:

No person serving a sentence imposed pursuant to this chapter shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except for persons convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, the terms of the sentence of an offender committed to a county jail facility, or a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the ((department)) correctional facility in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the ((department)) correctional facility. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration.

If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In no case shall the aggregate earned early release time exceed one-third of the total sentence. Persons convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible for community custody in lieu of earned early release time in accordance with the program developed by the department;

(2) When a person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW is eligible for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section, as computed by the department of corrections, the offender shall be transferred to community custody.

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing him or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160.

Sec. 3. Section 17, chapter 232, Laws of 1979 ex. sess. as last amended by section 1, chapter 298, Laws of 1985 and RCW 70.48.210 are each amended to read as follows:

(1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special

detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) ~~((With court approval))~~ The prisoner's sentence may be reduced by ((one-third if the prisoner's conduct, diligence, and general attitude merit the reduction)) earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The

earned early release time shall be for good behavior and good performance as determined by the facility. In no case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay.

NEW SECTION. Sec. 4. Section 1, chapter 99, Laws of 1937, section 1, chapter 276, Laws of 1983, section 1, chapter 209, Laws of 1984 and RCW 9.92.150 are each repealed.

NEW SECTION. Sec. 5. A new section is added to chapter 9.92 RCW to read as follows:

This act applies only to sentences imposed for crimes committed on or after July 1, 1989.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 249

[House Bill No. 1198]

CITIES OF THE FIRST CLASS—ELECTRICAL UTILITIES—AUTHORIZATION TO OPERATE

AN ACT Relating to cities of the first class that own and operate an electrical utility; and adding a new section to chapter 35.92 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.92 RCW to read as follows:

(1) Cities of the first class which operate electric generating facilities and distribution systems shall have power and authority to participate and

enter into agreements for the undivided ownership of high voltage transmission facilities and for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, to be called "common facilities"; and for the planning, financing, acquisition, construction, operation, and maintenance with: (a) Each other; (b) electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any other state, to be called "regulated utilities"; (c) rural electric cooperatives, including generation and transmission cooperatives in any state; (d) municipal corporations, utility districts, or other political subdivisions in any state; and (e) any agency of the United States authorized to generate or transmit electrical energy. It shall be provided in such agreements that each city shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of the facility and shall own and control a like percentage of the electrical output.

(2) The agreement must provide that each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition, and construction of any common facility, or any additions or betterments. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of a common facility.

(3) Each city participating in the ownership or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated under any applicable statutes and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, under agreement with such county or taxing district.

(4) In carrying out the powers granted in this section, each such city shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of others. No money or property supplied by any such city for the planning, financing, acquisition, construction, operation, or maintenance of any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any city unless authorized or approved by resolution or ordinance of its governing body.

(5) Any city acting jointly outside the state of Washington, by mutual agreement with any participant under authority of this section, shall not acquire properties owned or operated by any public utility district, by any regulated utility, or by any public utility owned by a municipality without the consent of the utility owning or operating the property, and shall not participate in any condemnation proceeding to acquire such properties.

Passed the House April 15, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 250

[Substitute Senate Bill No. 5663]

LOCAL OFFICIALS—RECALL ACTIONS—DEFENSE EXPENSES

AN ACT Relating to the recall of county officials; amending RCW 36.16.134; and adding a new section to chapter 35.21 RCW.

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

Sec. 1. Section 1, chapter 72, Laws of 1979 ex. sess. and RCW 36.16-.134 are each amended to read as follows:

(1) Whenever an action or proceeding for damages is brought against any officer or employee of a county of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer or employee may request the county to authorize the defense of the action or proceeding at the expense of the county.

(2) If the county legislative authority finds that the acts or omissions of the officer or employee were, or in good faith purported to be, within the scope of his or her official duties, the request may be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the county. Any ((money)) monetary judgment against the officer or employee may be paid on approval of the county legislative authority.

(3) The necessary expenses of defending an elective county officer in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the county if the officer requests such defense and approval is granted by both the county legislative authority and the prosecuting attorney. The expenses paid by the county may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

NEW SECTION. Sec. 2. A new section is added to chapter 35.21 RCW to read as follows:

The necessary expenses of defending an elective city or town official in a judicial hearing to determine the sufficiency of a recall charge as provided

in RCW 29.82.023 shall be paid by the city or town if the official requests such defense and approval is granted by the city or town council. The expenses paid by the city or town may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

Passed the Senate April 20, 1989.

Passed the House April 6, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 251

[House Bill No. 1047]

SECURITY INTERESTS—UNIFORM COMMERCIAL CODE

AN ACT Relating to secured transactions under the uniform commercial code; and amending RCW 62A.9-312 and 62A.9-402.

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

Sec. 1. Section 9-312, chapter 157, Laws of 1965 ex. sess. as last amended by section 52, chapter 35, Laws of 1986 and RCW 62A.9-312 are each amended to read as follows:

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments.

(2) ~~((A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest))~~ Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date

of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under RCW 62A.8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Sec. 2. Section 9-402, chapter 157, Laws of 1965 ex. sess. as last amended by section 5, chapter 186, Laws of 1982 and RCW 62A.9-402 are each amended to read as follows:

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a

statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or when the financing statement is filed as a fixture filing (RCW 62A.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under RCW 62A.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If applicable) The above goods are to become fixtures on*

(Describe Real Estate)

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

*Where appropriate substitute either "The above timber is standing on " or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on "

3. (If products of collateral are claimed)

Products of the collateral are also covered

(use
whichever Signature of Debtor (or Assignor)
is
applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party: PROVIDED, That a secured party may amend a financing statement without the signature of the debtor when the amendment is to change the address or name of the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments. The fee for filing an amendment shall be the same as the fee for filing a financing statement.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or a financing statement filed as a fixture filing (RCW 62A.9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or

corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an amendment is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Passed the House April 18, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 252

[Substitute House Bill No. 1542]

OFFENDERS—RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

AN ACT Relating to offenders' legal financial obligations; amending RCW 9.94A.140, 9.94A.142, 9.94A.270, 72.04A.120, and 72.65.060; reenacting and amending RCW 9.94A.030, 9.94A.120, 9.94A.200, and 7.68.035; adding new sections to chapter 9.94A RCW; adding a new chapter to Title 72 RCW; creating new sections; prescribing penalties; providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior.

Sec. 2. Section 11, chapter 145, Laws of 1988, section 1, chapter 153, Laws of 1988, section 2, chapter 154, Laws of 1988 and section 1, chapter 157, Laws of 1988 and RCW 9.94A.030 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) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department 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.

(2) "Commission" means the sentencing guidelines commission.

~~((2))~~ (3) "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.

~~((3))~~ (4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

~~((4))~~ (5) "Community placement" means a one-year period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

~~((5))~~ (6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

~~((6))~~ (7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

~~((7))~~ (8) "Confinement" means total or partial confinement as defined in this section.

~~((8))~~ (9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

~~((9))~~ (10) "Court-ordered 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.

(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.

~~((+0))~~ (12) (a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. 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) "Criminal history" includes a defendant's prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

~~((+1))~~ (13) "Department" means the department of corrections.

~~((+2))~~ (14) "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 supervision, the number of actual hours or days of community service work, or dollars or terms of a ~~((fine or restitution))~~ legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

~~((+3))~~ (15) "Disposable earnings" means that part of the earnings of an individual 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.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) 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.

~~((14))~~ (17) "Escape" means:

(a) 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 comply with any limitations on the inmate's movements 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.

~~((15))~~ (18) "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), or felony hit-and-run injury-accident (RCW 46.52.020(4)); 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.

~~((16))~~ (19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((17))~~ (20) (a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

~~((18))~~ (21) "Nonviolent offense" means an offense which is not a violent offense.

~~((19))~~ (22) "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 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.

~~((20))~~ (23) "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 has been ordered by the court, in the residence of either the defendant or a member

of the defendant's immediate family, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release and home detention as defined in this section.

~~((21))~~ (24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((22))~~ (25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

~~((23))~~ (26) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (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.

~~((24))~~ (27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or 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.

~~((25))~~ (28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((26))~~ (29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A-.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; 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 sex offense under (a) of this subsection.

~~((27))~~ (30) "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.

~~((28))~~ (31) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

~~((29))~~ (32) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, child molestation in the first degree, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and 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.

~~((30))~~ (33) "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. 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.

~~((31))~~ (34) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, for the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, burglary in the second degree as defined in RCW 9A.52.030, or harassment as defined in RCW 9A.46.020. Participation in a home detention program shall be conditioned upon: (a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, (b) abiding by the rules of the home detention program, and (c) compliance with court-ordered ~~((restitution))~~ legal financial obligations.

NEW SECTION. Sec. 3. (1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs fines, and other assessments required by law. On the

same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation.

(2) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. These obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation.

(3) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

(4) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(5) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

(6) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(7) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to section 9 of this act.

(8) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition and term of community supervision and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

(9) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with written notice of payments by such offenders no less frequently than weekly.

Sec. 4. Section 21, chapter 143, Laws of 1988, section 2, chapter 153, Laws of 1988 and section 3, chapter 154, Laws of 1988 and RCW 9.94A-.120 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than three years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum three year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer; or

(f) Pay ~~((a fine))~~ all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or ~~((accomplish some))~~ perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or ~~((a fine))~~ other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7) (a) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.040 or RCW 9A.44.050 and has no prior convictions for a sex offense or any other felony sexual offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

After receipt of the reports, the court shall then determine whether the offender and the community will benefit from use of this special sexual offender sentencing alternative. If the court determines that both the offender and the community will benefit from use of this provision, the court shall then impose a sentence within the sentence range and, if this sentence is less than six years of confinement, the court may suspend the execution of the sentence and place the offender on community supervision for up to two years. As a condition of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment;

(iii) 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;

(iv) Report as directed to the court and a community corrections officer;

(v) Pay (~~(a fine, accomplish some,)~~) all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(vi) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

If the offender violates these sentence conditions the court may revoke the suspension and order execution of the sentence. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(b) When an offender is convicted of any felony sexual offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sexual offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sexual offense committed prior to July 1, 1987.

(8) (a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense, a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly

weapon at the time of commission, or any felony offense under chapter 69-.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150(1). When the court sentences an 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.150(1). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense, a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, unless a condition is waived by the court, the sentence shall include, in addition to the other terms of the sentence, a one-year term of community placement on the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay ((community placement)) supervision fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) 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.

(10) If a sentence imposed includes ~~((a fine or restitution))~~ payment of a legal financial obligation, the sentence shall specify ~~((a reasonable manner and time in which the fine or restitution shall be paid. Restitution to victims shall be paid prior to any other payments of monetary obligations. In any sentence under this chapter the court may also require the offender to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (a) to pay court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (b) to make recoupment of the cost of defense attorney's fees if counsel is provided at public expense, (c) to contribute to a county or interlocal drug fund, and (d) to make such other payments as provided by law))~~ the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of ((monetary)) legal financial obligations shall be supervised by the department((The rate of payment shall be determined by the court or, in the absence of a rate determined by the court, the rate shall be set by the department)). All monetary payments ordered shall be paid no later than ten years after the ~~((most recent of either the))~~ last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. ~~((The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments:))~~

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or

community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, ~~((restitution, or fines))~~ or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer of any change in the offender's address or employment.

(13) 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.

(14) A departure from the standards in RCW 9.94A.400(1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210(2) through (6).

(15) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(16) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision.

(17) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release or in a program of home detention.

(18) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 5. Section 14, chapter 137, Laws of 1981 as last amended by section 3, chapter 281, Laws of 1987 and RCW 9.94A.140 are each amended to read as follows:

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days ~~((and may set~~

~~the terms and conditions under which the defendant shall make restitution)). The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.~~ Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim or defendant.

Sec. 6. Section 10, chapter 443, Laws of 1985 as amended by section 4, chapter 281, Laws of 1987 and RCW 9.94A.142 are each amended to read as follows:

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days (~~and shall set the terms and conditions under which the defendant shall make restitution~~). The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant.

(5) This section shall apply to offenses committed after July 1, 1985.

Sec. 7. Section 20, chapter 137, Laws of 1981 as last amended by section 11, chapter 153, Laws of 1988 and by section 2, chapter 155, Laws of 1988 and RCW 9.94A.200 are each reenacted and amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, or (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; and

(c) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of (~~fines or other monetary payments~~) legal financial obligations and regarding community service obligations.

(3) Nothing in this section prohibits the filing of escape charges if appropriate.

Sec. 8. Section 2, chapter 207, Laws of 1982 as amended by section 15, chapter 209, Laws of 1984 and RCW 9.94A.270 are each amended to read as follows:

(1) Whenever a punishment imposed under this chapter requires community supervision services to be provided, the sentencing court shall require that the offender pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the probation and which shall be considered as payment or part payment of the cost of providing probation supervision to the probationer. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the court.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the ((state general)) dedicated fund established pursuant to section 26 of this act.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

NEW SECTION. Sec. 9. A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the

terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment.

NEW SECTION. Sec. 10. Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with section 9 of this act, the court shall issue a wage assignment order as provided in section 12 of this act and including the information required in section 9 of this act, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with section 14 of this act within twenty days after service of the order upon the employer.

NEW SECTION. Sec. 11. (1) The wage assignment order in section 10 of this act shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

NEW SECTION. Sec. 12. The department shall develop a form and adopt rules for the wage assignment order.

NEW SECTION. Sec. 13. (1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under section 11 of this act. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

NEW SECTION. Sec. 14. The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer.

NEW SECTION. Sec. 15. (1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with section 14 of this act, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was

issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy.

NEW SECTION. Sec. 16. In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfactions by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order.

NEW SECTION. Sec. 17. In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

NEW SECTION. Sec. 18. 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.200.

NEW SECTION. Sec. 19. Sections 3 and 9 through 18 of this act are each added to chapter 9.94A RCW.

Sec. 20. Section 1, chapter 207, Laws of 1982 and RCW 72.04A.120 are each amended to read as follows:

(1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The board may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the board.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the board.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the ~~((state general))~~ dedicated fund established pursuant to section 26 of this act.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982.

Sec. 21. Section 6, chapter 17, Laws of 1967 and RCW 72.65.060 are each amended to read as follows:

The earnings of a work release participant shall not be subject to garnishment, attachment, or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds, except for payment of a court-ordered legal financial obligation as that term is defined in section 22 of this act.

NEW SECTION. Sec. 22. Unless a different meaning is plainly required by the context, the following words and phrases as hereafter used in this chapter shall have the following meanings:

(1) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

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

(3) "Offender" means an individual who is currently under the jurisdiction of the Washington state department of corrections, and who also has a court-ordered legal financial obligation as a result of a felony conviction.

(4) "Secretary" means the secretary of the department of corrections or the secretary's designee.

(5) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections.

NEW SECTION. Sec. 23. The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

NEW SECTION. Sec. 24. (1) Except as otherwise provided herein, all court-ordered legal financial obligations shall take priority over any other statutorily imposed mandatory withdrawals from inmate's accounts.

(2) For those inmates who are on work release pursuant to chapter 72.65 RCW, before any legal financial obligations are withdrawn from the inmate's account, the inmate is entitled to payroll deductions that are required by law, or such payroll deductions as may reasonably be required by the nature of the employment unless any such amount which his or her work release plan specifies should be retained to help meet the inmate's

needs, including costs necessary for his or her participation in the work release plan such as travel, meals, clothing, tools, and other incidentals.

(3) Before the payment of any court-ordered legal financial obligation is required, the department is entitled to reimbursement for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), for expenses incident to a work release plan pursuant to RCW 72.65.090, payments for board and room charges for the work release participant, and payments that are necessary for the support of the work release participant's dependents, if any.

NEW SECTION. Sec. 25. Sections 22 through 24 of this act shall constitute a new chapter in Title 72 RCW.

NEW SECTION. Sec. 26. The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.270 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

NEW SECTION. Sec. 27. Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act.

NEW SECTION. Sec. 28. The department of corrections and the county clerks association shall develop compatible management and accounting systems that will result in increased collections of legal financial obligations and report their proposed systems to the senate health care and corrections committee and the house health care committee by December 1, 1989.

Sec. 29. Section 10, chapter 302, Laws of 1977 ex. sess. as last amended by section 1, chapter 281, Laws of 1987 and RCW 7.68.035 are each amended to read as follows:

(1) Whenever any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be (~~seventy~~) one hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and (~~forty-five~~) seventy-five dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090,

46.70.140, 46.65.090, 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52-.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46-.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit not less than one and seventy-five one-hundredths percent of the money it retains under RCW 10.82.070 and chapter 3.62 RCW and all money it receives under subsection (8) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money

deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

(8) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section.

NEW SECTION. Sec. 30. (1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

NEW SECTION. Sec. 31. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 23, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 253

[Senate Bill No. 5826]

STUDENT TEACHING PILOT PROJECTS PROGRAM

AN ACT Relating to student teaching pilot projects; amending RCW 28A.70.400 and 28A.70.408; amending section 210, chapter 525, Laws of 1987 (uncodified); creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that strong teacher preparation programs are fundamentally important to the success of the state's entire educational system and that clinical field experiences are critical to the success of the teacher preparation programs.

(2) The legislature believes:

(a) Schools, school districts, and the colleges and universities mutually benefit from cooperative relationships to provide prospective teacher candidates with appropriate and necessary student teaching experiences;

(b) Prospective teacher candidates should have field experiences and student teaching opportunities which are, to the extent reasonably possible, reflective of the diversity existing among schools and school districts state-wide; and

(c) School districts state-wide, to the extent reasonably practical, should have access to student teachers.

Sec. 2. Section 205, chapter 525, Laws of 1987 and RCW 28A.70.400 are each amended to read as follows:

(1) The state board of education shall establish the requirements for a ~~((two-year))~~ pilot program to enhance the student teaching component of teacher preparation programs to support innovative ways to expand student teaching experiences for prospective teacher candidates and to expand opportunities for student teacher placements in school districts throughout the state. The state board shall adopt necessary rules under chapter ~~((34.04))~~ 34.05 RCW to carry out this program.

(2) In developing the pilot program requirements, the state board shall include a requirement that each grant application be jointly developed through a process including participation by school building and school district personnel, teacher preparation program personnel, ~~((program unit))~~ professional education advisory board members, and other personnel as appropriate. Primary administration for each grant project shall be the responsibility of one or more of the cooperating grant project participants, as determined by the grant project participants.

(3) The state board of education shall establish an advisory group or use an existing professional education advisory group to: (a) Assist the board and the pilot projects in addressing issues relating to the roles and responsibilities of the participating parties in implementing the projects; and

(b) assist the board in studying issues relating to the roles and responsibilities of the common school and higher education elements of the state's education system in the preparation of prospective teachers.

Sec. 3. Section 209, chapter 525, Laws of 1987 and RCW 28A.70.408 are each amended to read as follows:

(1) The state board of education shall evaluate the pilot projects and submit a preliminary report to the legislature not later than December 1, 1989.

(2) The state board of education shall evaluate the pilot projects and submit a report to the legislature not later than ((January 15;)) December 1, 1990, including findings and recommendations.

Sec. 4. Section 210, chapter 525, Laws of 1987 (uncodified) is amended to read as follows:

Sections 205 through 209 of this act shall expire ((January 16;)) December 31, 1990.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 10, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 254

[House Bill No. 1445]

STATE COLLEGES AND UNIVERSITIES—HALF-TIME STUDENTS—FINANCIAL AID—ELIGIBILITY

AN ACT Relating to the state needs grant program; amending RCW 28B.10.802, 28B.10.806, 28B.10.808, and 28B.10.810; 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 that nothing in this act shall prevent or discourage an individual from making an effort to repay any state financial aid awarded during his or her collegiate career.

Sec. 2. Section 8, chapter 222, Laws of 1969 ex. sess. as last amended by section 56, chapter 370, Laws of 1985 and RCW 28B.10.802 are each amended to read as follows:

As used in RCW 28B.10.800 through 28B.10.824:

(1) "Institutions of higher education" shall mean (1) any public university, college, community college, or vocational-technical institute operated by the state of Washington or any political subdivision thereof or (2) any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the board for the purposes of this section: PROVIDED, That any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association: PROVIDED FURTHER, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.10.822.

(2) The term "financial aid" shall mean loans and/or grants to needy students enrolled or accepted for enrollment as a ((full-time)) student at institutions of higher education.

(3) The term "needy student" shall mean a post high school student of an institution of higher learning as defined in subsection (1) of this section who demonstrates to the board the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter.

(4) The term "disadvantaged student" shall mean a post high school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full time student in an institution of higher learning, who would otherwise qualify as a needy student, and who is attending an institution of higher learning under an established program designed to qualify the student for enrollment as a full time student.

(5) "Commission" or "board" shall mean the higher education coordinating board.

Sec. 3. Section 11, chapter 222, Laws of 1969 ex. sess. and RCW 28B.10.806 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) Conduct a full analysis of student financial aid as a means of:

(a) Fulfilling educational aspirations of students of the state of Washington, and

(b) Improving the general, social, cultural, and economic character of the state.

Such an analysis will be a continuous one and will yield current information relevant to needed improvements in the state program of student financial aid. The commission will disseminate the information yielded by their analyses to all appropriate individuals and agents.

(c) This study should include information on the following:

(i) all programs and sources of available student financial aid,
 (ii) distribution of Washington citizens by socio-economic class,
 (iii) data from federal and state studies useful in identifying:
 (A) demands of students for specific educational goals in colleges, and
 (B) the discrepancy between high school students' preferences and the colleges they actually selected.

(2) Design a state program of student financial aid based on the data of the study referred to in this section. The state program will supplement available federal and local aid programs. The state program of student financial aid will not exceed the difference between the budgetary costs of attending an institution of higher learning and the student's total resources, including family support, personal savings, employment, and federal and local aid programs.

(3) Determine and establish criteria for financial need of the individual applicant based upon the consideration of that particular applicant. In making this determination the commission shall consider the following:

(a) Assets and income of the student.
 (b) Assets and income of the parents, or the individuals legally responsible for the care and maintenance of the student.
 (c) The cost of attending the institution the student is attending or planning to attend.
 (d) Any other criteria deemed relevant to the commission.

(4) Set the amount of financial aid to be awarded to any individual needy or disadvantaged student in any school year.

(5) Award financial aid to (~~full-time~~) needy or disadvantaged students for a school year based upon only that amount necessary to fill the financial gap between the budgetary cost of attending an institution of higher education and the family and student contribution.

(6) Review the need and eligibility of all applications on an annual basis and adjust financial aid to reflect changes in the financial need of the recipients and the cost of attending the institution of higher education.

Sec. 4. Section 12, chapter 222, Laws of 1969 ex. sess. and RCW 28B.10.808 are each amended to read as follows:

In awarding grants, the commission shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the commission, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The commission shall annually select the financial aid award winners from among Washington residents applying for student financial aid who have been ranked according to financial need as determined by the amount of the family contribution and other considerations brought to the commission's attention.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until dispersed.

(3) A grant may be renewed until the course of study is completed, but not for more than an additional ~~((three))~~ four academic years beyond the first year of the award. These shall not be required to be consecutive years. Qualifications for renewal will include maintaining satisfactory academic standing toward completion of the course of study, and continued eligibility as determined by the commission. Should the recipient terminate his enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds.

(4) In computing financial need the commission shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions.

Sec. 5. Section 13, chapter 222, Laws of 1969 ex. sess. and RCW 28B.10.810 are each amended to read as follows:

For a student to be eligible for financial aid ~~((he))~~ the student must:

(1) Be a "needy student" or "disadvantaged student" as determined by the commission in accordance with RCW 28B.10.802 (3) and (4).

(2) Have been domiciled within the state of Washington for at least one year.

(3) ~~Be enrolled or accepted for enrollment ((as a full-time student or as a student under an established program designed to qualify him for enrollment as a full-time student))~~ on at least a half-time basis at an institution of higher education in Washington.

(4) Have complied with all the rules and regulations adopted by the commission for the administration of RCW 28B.10.800 through 28B.10.824.

Passed the House April 18, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 255

[Substitute House Bill No. 1956]

ADOPTION—ADVERTISING—PROHIBITED PRACTICES

AN ACT Relating to adoption; adding a new section to chapter 26.33 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 26.33 RCW to read as follows:

(1) Unless the context clearly requires otherwise, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.

(2) No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption unless such person or entity is:

(a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children;

(b) An attorney licensed to practice in Washington state; or

(c) A person who has a completed preplacement report as set forth in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or an attorney who is licensed to practice in the state. Verification of compliance with the requirements of this section shall consist of a written declaration by the person or entity who prepared the preplacement report.

(3) Any such person or entity who places or causes such advertisement as prohibited in subsection (2) of this section shall be guilty of a misdemeanor.

NEW SECTION. Sec. 2. Nothing in section 1 of this act applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of section 1 of this act.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 256

[House Bill No. 1768]

BUILDING CODE COUNCIL FEES AND SURCHARGES

AN ACT Relating to state fees imposed on building permits; and amending RCW 19.27.085.

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

Sec. 1. Section 4, chapter 360, Laws of 1985 and RCW 19.27.085 are each amended to read as follows:

(1) There is hereby created the building code council account in the state treasury. Moneys deposited into the account shall be used by the building code council, after appropriation, to perform the purposes of the council.

(2) All moneys collected under subsection (3) of this section shall be deposited into the building code council account. Every four years the state treasurer shall report to the legislature on the balances in the account so that the legislature may adjust the charges imposed under subsection (3) of this section.

(3) There is imposed a fee of ~~((one-dollar))~~ four dollars and fifty cents on each building permit issued by a county or a city, plus an additional surcharge of two dollars for each residential unit, but not including the first unit, on each building containing more than one residential unit. Quarterly each county and city shall remit moneys collected under this section to the state treasury; however, no remittance is required until a minimum of fifty dollars has accumulated pursuant to this subsection.

Passed the House April 20, 1989.

Passed the Senate April 20, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 257

[House Bill No. 1993]

POULTRY—LABELLING—PROHIBITED PRACTICES

AN ACT Relating to the labeling of poultry products; adding a new section to chapter 69.04 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state.

NEW SECTION. Sec. 2. A new section is added to chapter 69.04 RCW to read as follows:

Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state.

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

Passed the House March 14, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 258

[Substitute House Bill No. 1958]

CHIROPRACTIC—MEMBERSHIP OF BOARDS AND LICENSING REQUIREMENTS REVISED

AN ACT Relating to board membership and licensing requirements; amending RCW 18.25.015, 18.25.017, 18.25.020, 18.25.030, 18.25.070, 18.25.090, 18.26.010, 18.26.020, 18.26.040, 18.26.070, and 18.26.090; and adding new sections to chapter 18.25 RCW.

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

Sec. 1. Section 1, chapter 53, Laws of 1959 as last amended by section 49, chapter 279, Laws of 1984 and RCW 18.25.015 are each amended to read as follows:

There is hereby created a state board of chiropractic examiners consisting of five practicing chiropractors and one consumer member to conduct examinations and perform duties as provided in this chapter.

Members of the board shall be appointed by the governor, who may consider such persons who are recommended for appointment by chiropractic associations of this state. For at least five years preceding the time of their appointment, and during their tenure of office, the members of the board must be actual residents of Washington(~~(-licensed to practice chiropractic in this state;))~~) and must be citizens of the United States. In addition, the doctors of chiropractic shall have been engaged in the active licensed practice of chiropractic in this state for a minimum of five years.

Appointments shall be for a term of ~~((three))~~ five years. Vacancies of members shall be filled by the governor as in the case of original appointment, such appointee to hold office for the remainder of the unexpired term. No board member shall serve more than two consecutive full terms.

A simple majority of the board members shall constitute a quorum of the board.

***Sec. 2. Section 2, chapter 53, Laws of 1959 as last amended by section 23, chapter 259, Laws of 1986 and RCW 18.25.017 are each amended to read as follows:**

The board shall meet as soon as practicable after appointment, and shall elect a chairman and a ~~((secretary))~~ vice-chairman from its members. Meetings shall be held at least once a year at such place as the director of licensing shall determine, and at such other times and places as he or she deems necessary.

The board may make such rules and regulations, not inconsistent with this chapter, as it deems necessary to carry out the provisions of this chapter.

Each member shall be compensated in accordance with RCW ~~((43.03-240))~~ 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060, all to be paid out of the ~~((general fund))~~ health professions account on vouchers approved by the director, but not to exceed in the aggregate the amount of fees collected as provided in this chapter.

***Sec. 2 was vetoed, see message at end of chapter.**

Sec. 3. Section 5, chapter 5, Laws of 1919 as last amended by section 14, chapter 7, Laws of 1985 and RCW 18.25.020 are each amended to read as follows:

(1) Any person not now licensed to practice chiropractic in this state and who desires to practice chiropractic in this state, before it shall be lawful for him or her to do so, shall make application therefor to the director, upon such form and in such manner as may be adopted and directed by the director. Each applicant who matriculates to a chiropractic college after January 1, 1975, shall have completed not less than one-half of the requirements for a baccalaureate degree at an accredited and approved college or university and shall be a graduate of a chiropractic school or college accredited and approved by the board of chiropractic examiners and shall show satisfactory evidence of completion by each applicant of a resident course of study of not less than four thousand classroom hours of instruction in such school or college. Applications shall be in writing and shall be signed by the applicant in his or her own handwriting and shall be sworn to before some officer authorized to administer oaths, and shall recite the history of the applicant as to his or her educational advantages, his or her experience in matters pertaining to a knowledge of the care of the sick, how long he or she has studied chiropractic, under what teachers, what collateral branches, if any, he or she has studied, the length of time he or she has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the director by each applicant for a license, a fee determined by the director as provided in RCW 43.24.086 which shall

accompany application and a fee determined by the director as provided in RCW 43.24.086, which shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application.

Sec. 4. Section 6, chapter 5, Laws of 1919 as last amended by section 10, chapter 97, Laws of 1974 ex. sess. and RCW 18.25.030 are each amended to read as follows:

Examinations for license to practice chiropractic shall be made by the board of chiropractic examiners according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of his or her name, so that the identity shall not be discovered or disclosed to the members of the examining committee until after the examination papers are graded.

All examinations shall be in whole or in part in writing, the subject of which shall be as follows: Anatomy, physiology, ~~((hygiene, symptomatology, neurology, spinal pathology))~~ spinal anatomy, microbiology-public health, general diagnosis, neuromuscularskeletal diagnosis, x-ray, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges. The board shall administer a practical examination to applicants which shall consist of diagnosis, principles and practice, x-ray, and adjustive technique consistent with chapter 18.25 RCW. A license shall be granted to all applicants ((who shall correctly answer)) whose score over each subject tested is seventy-five percent ((of all questions asked, and if any applicant shall fail to answer correctly seventy percent of the questions on any branch of said examination, he or she shall not be entitled to a license)). The board may enact additional requirements for testing administered by the national board of chiropractic examiners.

Sec. 5. Section 10, chapter 5, Laws of 1919 as last amended by section 17, chapter 7, Laws of 1985 and RCW 18.25.070 are each amended to read as follows:

(1) Every person practicing chiropractic shall, as a prerequisite to annual renewal of license, submit to the director at the time of application therefor, satisfactory proof showing attendance of at least twenty-five hours during the preceding ~~((three-year))~~ twelve-month period, at one or more chiropractic symposiums which are recognized and approved by the board of chiropractic examiners: PROVIDED, That the board may, for good cause shown, waive said attendance. The following guidelines for such symposiums shall apply:

(a) ~~((Symposiums which shall be approved by the board for licensees practicing or residing within the state of Washington are those sponsored or conducted by any chiropractic association in the state or an approved chiropractic college or other institutions or organizations which devote themselves to lectures or demonstrations))~~ The board shall set criteria for the

course content of educational symposia concerning matters which are recognized ((in)) by the state of Washington chiropractic licensing laws; it shall be the licensee's responsibility to determine whether the course content meets these criteria;

(b) The board shall adopt standards for distribution of annual continuing education credit requirements;

(c) Rules shall be adopted by the board for licensees practicing and residing outside the state who shall meet all requirements established by the board by rules and regulations.

(2) Every person practicing chiropractic within this state shall pay on or before ~~((the first day of September of each year))~~ his or her birth anniversary date, after a license is issued to him or her as herein provided, to said director a renewal license fee to be determined by the director as provided in RCW 43.24.086. The director shall, thirty days or more before ~~((September first of each year, mail to all chiropractors in the state))~~ the birth anniversary date of each chiropractor in the state, mail to that chiropractor a notice of the fact that the renewal fee will be due on or before ~~((the first of September))~~ his or her birth anniversary date. Nothing in this chapter shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded.

The failure of any licensed chiropractor to pay his or her annual license renewal fee ~~((by the first day of October following the date on which the fee was due))~~ within thirty days of license expiration shall work a forfeiture of his or her license. It shall not be reinstated except upon evidence that continuing educational requirements have been fulfilled and the payment of a penalty to be determined by the director as provided in RCW 43.24.086, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. Should the licentiate allow his or her license to elapse for more than three years, he ~~((must))~~ or she may be reexamined as provided for in RCW 18.25.040 at the discretion of the board.

Sec. 6. Section 15, chapter 5, Laws of 1919 as last amended by section 24, chapter 259, Laws of 1986 and RCW 18.25.090 are each amended to read as follows:

On all cards, books, papers, signs or other written or printed means of giving information to the public, used by those licensed by this chapter to practice chiropractic, the practitioner shall use after or below his or her name the term chiropractor, D.C., or D.C.Ph.C., designating his or her line of drugless practice, and shall not use the letters M.D. or D.O.: PROVIDED, That the word doctor or "Dr." may be used only in conjunction with the word "chiropractic" or "chiropractor". Nothing in this chapter shall be held to apply to or to regulate any kind of treatment by prayer.

Sec. 7. Section 1, chapter 171, Laws of 1967 and RCW 18.26.010 are each amended to read as follows:

This chapter is passed:

(1) In the exercise of the police power of the state and to provide an adequate public agency to act as a disciplinary body for the members of the chiropractic profession licensed to practice chiropractic in this state;

(2) Because the health and well-being of the people of this state are of paramount importance;

(3) Because the conduct of members of the chiropractic profession licensed to practice chiropractic in this state plays a vital role in preserving the health and well-being of the people of the state; and

(4) ~~((Because the agency which now exists to handle disciplinary proceedings for members of the chiropractic profession licensed to practice chiropractic in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health; and~~

~~(5))~~ Because practicing other healing arts while licensed to practice chiropractic and while holding one's self out to the public as a chiropractor affects the health and welfare of the people of the state.

Sec. 8. Section 2, chapter 171, Laws of 1967 and RCW 18.26.020 are each amended to read as follows:

Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the chiropractic disciplinary board;

(2) "License" means a certificate of license to practice chiropractic in this state as provided for in chapter 18.25 RCW;

(3) "Members" means members of the chiropractic disciplinary board;

(4) ~~(("~~Secretary" means the secretary of the chiropractic disciplinary board)) "Department" means the department of licensing;

(5) "Director" means the director of the department of licensing or the director's designee;

(6) "Chiropractor" means a person licensed under chapter 18.25 RCW.

Sec. 9. Section 1, chapter 46, Laws of 1980 and RCW 18.26.040 are each amended to read as follows:

There is hereby created the Washington state chiropractic disciplinary board of seven members to be composed of six chiropractic members to be appointed by the governor, and one member appointed by the governor who shall be representative of the public at large. ~~((Initial members shall be named within thirty days after May 2, 1979, whose names and addresses shall be promptly sent to the director of licensing, and such board shall meet and organize at a time and place to be determined by the director of licensing within sixty days after May 2, 1979 and after written notice to the named members of such date and place.~~

~~The director of licensing or the designee shall designate the terms of the initial members of the disciplinary board. For terms beginning on May 2, 1979, three members shall be designated for three-year terms; two members shall be designated for four-year terms, and two members shall be designated for five-year terms.~~

Subsequent designations)) For at least five years preceding the time of their appointment, and during their tenure of office, the chiropractic members of the board must be residents of Washington.

In addition, the doctors of chiropractic shall have been engaged in the active licensed practice of chiropractic in this state for a minimum of five years.

Board appointments shall be for a term of five years. No board member shall serve more than two consecutive full terms.

**Sec. 10. Section 2, chapter 46, Laws of 1980 as amended by section 28, chapter 287, Laws of 1984 and RCW 18.26.070 are each amended to read as follows:*

Members of the board may be compensated in accordance with RCW ((43.03.240)) 43.03.250 and may be paid their travel expenses while engaged in the business of the board in accordance with RCW 43.03.050 and 43.03-.060, with such reimbursement to be paid out of the ((general fund)) health professions account on vouchers signed by the director of licensing.

**Sec. 10 was vetoed, see message at end of chapter.*

Sec. 11. Section 9, chapter 171, Laws of 1967 and RCW 18.26.090 are each amended to read as follows:

The board shall elect from its members a chairman((;)) and vice-chairman, ((and secretary,)) who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairman at such times and places as the chairman shall designate. ((Five)) A simple majority of the board members shall constitute a quorum ((to transact the business)) of the board.

NEW SECTION. Sec. 12. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of the department of licensing or the director's designee.

(3) "Chiropractor" means an individual licensed under this chapter.

(4) "Board" means the Washington state board of chiropractic examiners.

NEW SECTION. Sec. 13. Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon.

NEW SECTION. Sec. 14. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice chiropractic in this state without first activating the license.

(2) The inactive renewal fee shall be established by the director pursuant to RCW 43.24.086. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(4) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

NEW SECTION. Sec. 15. Sections 12 through 14 of this act are each added to chapter 18.25 RCW.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 5, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1989.

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

"I am returning herewith, without my approval as to sections 2 and 10, Substitute House Bill No. 1958 entitled:

"AN ACT Relating to board membership and licensing requirements."

RCW 43.03.240 specifically designates all part-time boards which perform regulatory or licensing functions with respect to a specific profession, occupation, business, or industry as class three groups for purposes of compensation. Members of boards classified as class three groups receive up to \$50 for each day during which the member attends an official meeting or performs statutorily prescribed duties. Both the Board of Chiropractic Examiners and the Chiropractic Disciplinary Board are included in the definition of the part-time boards under RCW 43.03.240.

Sections 2 and 10 of Substitute House Bill No. 1958 attempt to change the compensation of the Board of Chiropractic Examiners and the Chiropractic Disciplinary Board by amending their respective practice acts to refer to RCW 43.03.250. Enactment of these two sections would clearly be in conflict with RCW 43.03.240.

Additionally, the Office of Financial Management, pursuant to a statutory requirement, reviewed all part-time boards and reported to the Legislature in November, 1988. This report is under consideration by the respective legislative committees. This is the appropriate forum to consider changes in compensation for all boards within a class or changes in language to recategorize groups of boards from one class to another.

With the exception of sections 2 and 10, Substitute House Bill No. 1958 is approved."

CHAPTER 259

[Substitute House Bill No. 1457]

INDETERMINATE SENTENCING REVIEW BOARD—DUTIES

AN ACT Relating to the indeterminate sentence review board; amending RCW 9.95.009, 9.95.115, and 9.95.0011; adding new sections to chapter 9.95 RCW; repealing RCW 9.95-.0012; repealing section 1, chapter 224, Laws of 1986 (uncodified); repealing section 14, chapter 224, Laws of 1986 (uncodified); and making an appropriation.

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

Sec. 1. Section 24, chapter 137, Laws of 1981 as last amended by section 6, chapter 224, Laws of 1986 and RCW 9.95.009 are each amended to read as follows:

(1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentencing review board. The board's membership shall be reduced as follows: On July 1, 1986, and on July 1st of each year until ~~((+1992))~~ 1998, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, including those relating to persons committed under a mandatory life sentence, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.040 and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: PROVIDED, That the board and its successors shall give adequate written reasons whenever a minimum term or parole release ~~((decisions {decision}))~~ decision is made which is outside the sentencing ranges adopted pursuant to RCW 9.94A.040. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

NEW SECTION. Sec. 2. A new section is added to chapter 9.95 RCW to read as follows:

(1) The board shall fix the duration of confinement for persons committed to the custody of the department of corrections under a mandatory life sentence for a crime or crimes committed before July 1, 1984. However, no duration of confinement shall be fixed for those persons committed under a life sentence without the possibility of parole.

The duration of confinement for persons covered by this section shall be fixed no later than July 1, 1992, or within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later.

(2) Prior to fixing a duration of confinement under this section, the board shall request from the sentencing judge and the prosecuting attorney an updated statement in accordance with RCW 9.95.030. In addition to the report and recommendations of the prosecuting attorney and sentencing judge, the board shall also consider any victim impact statement submitted by a victim, survivor, or a representative, and any statement submitted by an investigative law enforcement officer. The board shall provide the convicted person with copies of any new statement and an opportunity to comment thereon prior to fixing the duration of confinement.

Sec. 3. Section 1, chapter 238, Laws of 1951 and RCW 9.95.115 are each amended to read as follows:

The ~~((board of prison terms and paroles))~~ indeterminate sentence review board is hereby granted authority to parole any person sentenced to the ~~((penitentiary or the reformatory))~~ custody of the department of corrections, under a mandatory life sentence~~((, who))~~ for a crime committed prior to July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time~~((: PROVIDED, The superintendent of the penitentiary or the reformatory, as the case may be, certifies to the *board of prison terms and paroles that such person's conduct and work have been meritorious, and based thereon, recommends parole for such person))~~: PROVIDED, That no such person shall be released under parole who is found to be a sexual psychopath under the provisions of and as defined by chapter ~~((71.12))~~ 71.06 RCW.

Sec. 4. Section 12, chapter 224, Laws of 1986 and RCW 9.95.0011 are each amended to read as follows:

(1) The indeterminate sentencing review board shall cease to exist on June 30, ~~((1992, and all of its powers, duties, and functions with respect to persons convicted of crimes committed before July 1, 1984, shall be transferred to the superior courts of the state of Washington))~~ 1998. Prior to June 30, ~~((1992))~~ 1998, the board shall review each inmate convicted of

~~crimes committed before July 1, 1984, and prepare a report ((for the superior courts)). This report shall include a recommendation regarding the offender's suitability for parole ((and)), appropriate parole conditions, and, for those persons committed under a mandatory life sentence, duration of confinement. ((The sentencing judge or his or her successor in the county of conviction shall thereafter have full jurisdiction and authority over such offenders. These duties may be delegated to commissioners. Actions taken by commissioners shall be in the form of a report and recommendation to the sentencing judge or his or her successors who have sole authority to determine duration of confinement or parole release.))~~

(2) ~~The governor, through the office of financial management, shall recommend to the legislature alternatives for carrying out the duties of the board. In developing recommendations, the office of financial management shall consult with the indeterminate sentence review board, Washington association of prosecuting attorneys, Washington defender association, department of corrections, and administrator for the courts((, and office of financial management shall prepare an implementation plan to accomplish transfer of the board's powers, duties, and functions to the superior courts of the state of Washington. The plan)). Recommendations shall include a detailed fiscal analysis and recommended formulas and procedures for the reimbursement of costs to local governments if necessary. ((This plan)) Recommendations shall be presented to the ((1990)) 1997 legislature.~~

~~((3) On July 1, 1992, all documents, records, files, equipment, and other tangible property of the indeterminate sentencing review board shall be transferred to the department of corrections. The department of corrections shall assist the judiciary in fulfilling its responsibilities under this chapter, including the preparation of written recommendations.~~

~~(4) On July 1, 1992, references to the "board" or "the indeterminate sentence review board" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the superior court of the state of Washington that originally sentenced the offender to prison.))~~

NEW SECTION. Sec. 5. A new section is added to chapter 9.95 RCW to read as follows:

The board shall apply all of the statutory requirements of RCW 9.95.009(2), requiring decisions of the board to be reasonably consistent with the ranges, standards, and purposes of the sentencing reform act, chapter 9.94A RCW, and the minimum term recommendations of the sentencing judge and the prosecuting attorney, to every person who, on the effective date of this act, is incarcerated and has been adjudged under the provisions of RCW 9.92.090.

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 224, Laws of 1986 (uncodified);

- (2) Section 13, chapter 224, Laws of 1986 and RCW 9.95.0012; and
 (3) Section 14, chapter 224, Laws of 1986 (uncodified).

NEW SECTION. Sec. 7. The sum of three hundred sixteen thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the indeterminate sentence review board to carry out sections 1 and 3 of this act.

Passed the House April 22, 1989.

Passed the Senate April 22, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 260

[Substitute House Bill No. 1560]

MEDICAL ASSISTANCE—PROGRAM REQUIREMENTS AND PAYMENT RATES

AN ACT Relating to medical assistance; amending RCW 74.09.730, 74.09.522, and 18-71.210; and adding a new section to chapter 70.24 RCW.

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

Sec. 1. Section 20, chapter 5, Laws of 1987 1st ex. sess. and RCW 74.09.730 are each amended to read as follows:

~~((1) The department of social and health services shall, to the extent that funds are specifically appropriated for this purpose, provide matching grants on a one-to-one state/local basis to hospitals that are designated by the hospital commission as meeting all of the following criteria:~~

~~(a) Providing an amount of charity care equal to or greater than two hundred fifty percent of the state average;~~

~~(b) A tertiary care center; and~~

~~(c) Providing ten percent of the tertiary care to patients from outside the county in which the hospital is located.~~

~~(2) Grants shall be allocated to eligible hospitals based on the hospital's relative amount of charity care.~~

~~(3) Local matching funds shall be from a nonrate-setting revenue source as defined by the hospital commission.~~

~~(4) The department shall seek matching federal Title XIX medicaid funds pursuant to the "disproportionate share" provisions of the federal social security act. If necessary to obtain federal funds, the department may use the following provision in lieu of those set forth in subsections (1), (2), and (3) of this section: A hospital is eligible for a grant if it is designated by the hospital commission as having medical assistance charges exceeding twenty percent of the hospital's total rate-setting revenue during the preceding calendar year.)) In establishing Title XIX payment rates for inpatient hospital services:~~

(1) The department of social and health services shall take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs;

(2) The department shall define eligible disproportionate share hospitals by regulation, and shall consider a hospital's Medicaid utilization rate, its low-income utilization rate, and its provision of obstetric services;

(3) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation.

Sec. 2. Section 2, chapter 303, Laws of 1986 as amended by section 21, chapter 5, Laws of 1987 1st ex. sess. and RCW 74.09.522 are each amended to read as follows:

(1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated case management basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act.

(2) No later than July 1, ~~((1989))~~ 1991, the department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of aid to families with dependent children under the following conditions:

(a) Agreements shall be made ~~((within one class A county in the eastern part of the state))~~ for at least ~~((ten))~~ thirty thousand recipients ~~((and one class AA county for at least fifteen thousand recipients in the western part of the state, and one first class county of at least five thousand recipients in the western part of the state))~~ state-wide;

(b) Agreements in at least one ~~((of the agreements))~~ county shall include enrollment of all recipients of aid to families with dependent children ~~((residing in a defined geographical area));~~

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed six months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for cause;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed

health care systems, except that this subsection (d) shall not apply to entities described in subparagraph (B) of section 1903(m) of Title XIX of the federal social security act;

(e) Prior to negotiating with any managed health care system, the department shall estimate, on an actuarially sound basis, the expected cost of providing the health care services expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different project areas. In negotiating with managed health care systems the department shall adopt a uniform procedure ~~((that includes at least request for proposals))~~ to negotiate and enter into contractual arrangements, including standards regarding the quality of services to be provided; and financial integrity of the responding system ~~((The department may negotiate with respondents to the extent necessary to refine any proposals))~~;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-system services and assure that recipients shall not be charged for such services; and

(i) Nothing in this section prevents the department from entering into similar agreements ~~((in additional counties or))~~ for other groups of people eligible to receive services under chapter 74.09 RCW.

(3) The department shall seek to obtain a large number of contracts with providers of health services to medicaid recipients. The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate in the project as managed health care systems are seriously considered as providers in the project. The department shall coordinate these projects with the plans developed under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

NEW SECTION. Sec. 3. A new section is added to chapter 70.24 RCW to read as follows:

(1) "Class IV human immunodeficiency virus insurance program," as used in this section, means the program financed by state funds to assure

health insurance coverage for individuals with class IV human immunodeficiency virus infection, as defined by the state board of health, who meet eligibility requirements established by the department.

(2) The department may pay for health insurance coverage with funds appropriated for this purpose on behalf of persons who are infected with class IV human immunodeficiency virus, meet program eligibility requirements, and are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985 or group health insurance policies: PROVIDED, That this authorization to pay for health insurance shall cease on June 30, 1991, as to any coverage not initiated prior to that date.

Sec. 4. Section 3, chapter 305, Laws of 1971 ex. sess. as last amended by section 502, chapter 212, Laws of 1987 and RCW 18.71.210 are each amended to read as follows:

No act or omission of any physician's trained mobile intensive care paramedic, intravenous therapy technician, or airway management technician, as defined in RCW 18.71.200 as now or hereafter amended, any emergency medical technician or first responder as defined in RCW 18.73-.030, ~~((or any first responder under RCW 18.73.205)),~~ done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder;

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, as the case may be.

This section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency

medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained mobile intensive care paramedics, intravenous therapy technicians, airway management technicians, emergency medical technicians, or first responders.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct.

Passed the House April 19, 1989.

Passed the Senate April 14, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 261

[House Bill No. 1996]

VOTER REGISTRATION CANCELLATION—INQUIRY AND NOTICE

AN ACT Relating to voter registration cancellation; amending RCW 29.10.180; and repealing RCW 29.10.190.

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

Sec. 1. Section 1, chapter 359, Laws of 1987 and RCW 29.10.180 are each amended to read as follows:

(1) Whenever any vote-by-mail ballot, notification to voters following reprecincting of the county, notification to voters of selection to serve on jury duty, or initial voter identification card is returned by the postal service as undeliverable, the county auditor shall, in every instance, inquire into the validity of the registration of that voter.

(2) The county auditor shall initiate his or her inquiry by sending, by first-class mail, a written notice to the challenged voter at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter. The county auditor shall not request any restriction on the forwarding of such notice by the postal service. The notice shall contain the nature of the inquiry and provide a suitable form for reply. The notice shall also contain a warning that the county auditor must receive a response within ~~((sixty))~~ forty-five days from the date of mailing or the individual's voter registration will be canceled.

(3) The voter, in person or in writing, may state that the information on the permanent voter registration record is correct or may request a change in the address information on the permanent registration record no later than the ~~((sixtieth))~~ forty-fifth day after the date of mailing the inquiry.

(4) Upon the timely receipt of a response signed by the voter, the county auditor shall consider the inquiry satisfied and will make ~~((the))~~ any address corrections requested by the voter on the permanent registration record. The county auditor shall cancel the registration of a voter who fails to respond to the notice of inquiry within ~~((sixty))~~ forty-five days after the date of mailing.

(5) The county auditor shall notify ~~((the))~~ any voter whose registration has been canceled by ~~((mail as prescribed in RCW 29.10.080. A voter may respond no later than the forty-fifth day after the date of mailing of the notice of cancellation))~~ sending, by first class mail, a written notice to the address indicated on the voter's permanent registration record and to any other address to which the original inquiry was sent. Upon receipt of ~~((the))~~ a satisfactory voter response, the auditor shall reinstate the voter.

(6) A voter whose registration has been canceled under this section and who offers to vote at the next ensuing election shall be issued a questioned ballot. Upon receipt of such a questioned ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration shall be immediately reinstated, and the voter's questioned ballot shall be counted. If the original cancellation was not in error, the voter shall be afforded the opportunity to reregister at his or her correct address, and the voter's questioned ballot shall not be counted.

NEW SECTION. Sec. 2. Section 2, chapter 359, Laws of 1987 and RCW 29.10.190 are each repealed.

Passed the House March 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 262

[Substitute House Bill No. 1854]

WATER POLLUTION CONTROL—RESOURCE DAMAGE—MEASURE OF DAMAGES

AN ACT Relating to resource damage assessment under the state water pollution control act; amending RCW 90.48.142, 90.48.390, and 90.48.400; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that there is confusion regarding the measure of damages authorized under RCW 90.48.142. The intent of this act is to clarify existing law on the measure of damages authorized under RCW 90.48.142, not to change the law.

Sec. 2. Section 13, chapter 139, Laws of 1967 ex. sess. as last amended by section 69, chapter 36, Laws of 1988 and RCW 90.48.142 are each amended to read as follows:

(1) Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department or the director made pursuant to the provisions of this chapter, including the conditions of a waste discharge permit issued pursuant to RCW 90.48.160, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to: (a) Restore any damaged resource to its condition prior to the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration; or (b) compensate for the lost value throughout the duration of the injury that the resource previously provided if restoration is not technically feasible and, when only partial restoration is technically feasible, compensate for the remaining lost value. "Technical feasibility" or "technically feasible" shall mean for the purposes of this subsection, that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(2) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake or other ((water source)) waters of the state, including any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition prior to the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures.

(3) Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of Thurston county or the county in which such damages occurred: PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to ((either the state wildlife fund or the department of fisheries to use for food fish or shellfish management purposes and propagation, or to any other agency of the state having jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate. PROVIDED, That the agency receiving such money shall utilize not less than one-half of

~~said money on activities or)) the coastal protection fund established under RCW 90.48.390. A steering committee consisting of representatives of the departments of ecology, fisheries, wildlife, natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under this section after consulting impacted local agencies and local and tribal governments. The department shall chair the steering committee. The moneys collected under this section shall only be used for the following purposes: (a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens; (b) investigations of the long-term effects of discharges, including sewer sludge, on state resources; and (c) reimbursement of agencies for reasonable reconnaissance and damage assessment costs under this chapter. Agencies may not be reimbursed under this section for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources. In authorizing restoration or enhancement projects, preference shall be given to projects within ~~((the county))~~ counties where ~~((the action was brought by the attorney general))~~ the injury occurred. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.~~

Sec. 3. Section 4, chapter 180, Laws of 1971 ex. sess. and RCW 90.48.390 are each amended to read as follows:

The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907. To this fund there shall be credited penalties, fees, damages, and charges received pursuant to the provisions of RCW 90.48.142 and 90.48.315 through 90.48.365 and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be deposited with the state treasurer to the credit of the fund and may be invested in such manner as is provided for by law. Interest received on such investment shall be credited to the fund.

Sec. 4. Section 5, chapter 180, Laws of 1971 ex. sess. and RCW 90.48.400 are each amended to read as follows:

(1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 including but not limited to equipment rental and contracting costs.

(b) All costs involved in the abatement of pollution related to the discharge of oil.

(c) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil.

(2) Moneys disbursed from the coastal protection fund for the abatement of pollution caused by the discharge of oil shall be reimbursed to the fund whenever:

(a) Moneys are available under any federal program; or

(b) Moneys are available from a recovery made by the department from the person liable for the discharge of oil.

(3) Moneys collected under section 2 of this act shall only be used for the purposes enumerated in that section, subject to the approval of the steering committee.

****NEW SECTION. Sec. 5. This act applies prospectively only and not retroactively. It applies only to causes of action which arise after the effective date of this act.***

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 15, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 5, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1989.

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

"I am returning herewith, without my approval as to section 5, Substitute House Bill No. 1854 entitled:

"AN ACT Relativ_g to resource damage assessment under the state water pollution control act."

Section 1 states that the Legislature finds that there is confusion regarding the measure of natural resource damages and that the intent of this bill is to clarify existing law.

This intent, however, is contradicted by section 5 which states that the act is intended to apply prospectively only and not retroactively. This will continue the ambiguity contrary to the rule of statutory construction that remedial or clarifying legislation, in civil matters such as this, is intended to apply retroactively.

With the exception of section 5, Substitute House Bill No. 1854 is approved.*

CHAPTER 263

[House Bill No. 1757]

SCHOOL DISTRICTS—SECOND CLASS—EMPLOYMENT OF OFFICER'S SPOUSE AS SUBSTITUTE TEACHER

AN ACT Relating to employing contracts in second class school districts; amending RCW 42.23.030; adding a new section to chapter 28A.60 RCW; and declaring an emergency.

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

Sec. 1. Section 1, chapter 44, Laws of 1983 1st ex. sess. and RCW 42-.23.030 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality, other than a county of the first class or higher, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district, for unskilled day labor at wages not exceeding one hundred dollars in any calendar month;

(6) The letting of any other contract (except a sale or lease as seller or lessor) by a municipality, other than a county of the first class or higher, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district: **PROVIDED**, That the total volume of business represented by such contract or contracts in which a particular officer is interested, singly or in the aggregate, as measured by the dollar amount of the municipality's liability thereunder, shall not exceed

seven hundred fifty dollars in any calendar month: PROVIDED FURTHER, That in the case of a particular officer of a city or town of the third, or fourth class, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total volume of such contract or contracts authorized in this subsection may exceed seven hundred fifty dollars in any calendar month but shall not exceed nine thousand dollars in any calendar year: PROVIDED FURTHER, That there shall be public disclosure by having an available list of such purchases or contracts, and if the supplier or contractor is an official of the municipality, he or she shall not vote on the authorization;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers, who shall be appointed from members of the American institute of real estate appraisers by the presiding judge of the superior court in the county where the property is situated, shall find and the court finds that all terms and conditions of such lease are fair to the port district and are in the public interest;

(8) The letting of any contract for the driving of a school bus in a second class school district: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of any contract to the spouse of an officer of a second class school district in which less than two hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.01.020, when such contract is solely for employment as a certificated or classified employee of the school district, or the letting of any contract to the spouse of an officer of a second class district in which less than five hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.01.020, when such contract is solely for employment as a substitute teacher for the school district: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under section 2 of this act, that there is a shortage of substitute teachers in the school district.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.60 RCW to read as follows:

The board of directors of each second class school district shall adopt a written policy governing procedures for the letting of any employment contract authorized under RCW 42.23.030. This policy shall include provisions to ensure fairness and the appearance of fairness in all matters pertaining to employment contracts so authorized.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 15, 1989.
Passed the Senate April 7, 1989.
Approved by the Governor May 5, 1989.
Filed in Office of Secretary of State May 5, 1989.

CHAPTER 264

[Substitute Senate Bill No. 5812]

MOTOR VEHICLE COMMON AND CONTRACT CARRIERS—PUBLIC LIABILITY INSURANCE REQUIREMENTS—STATE PREEMPTION

AN ACT Relating to motor vehicle common carriers; adding a new section to chapter 81.80 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The state legislature has prescribed what requirements are necessary for public liability insurance for motor vehicle common and contract carriers to adequately protect both public and private property, both real and personal. It is therefore necessary and desirable for the state to prevent each city or county from applying its own separate insurance regulations in addition to those required by the commission.

NEW SECTION. Sec. 2. A new section is added to chapter 81.80 RCW to read as follows:

This chapter shall exclusively govern the liability insurance requirements for motor vehicle common and contract carriers. Any motor vehicle that meets the public liability requirements prescribed under RCW 81.80-.190 shall not be required to comply with any ordinances of a city or county prescribing insurance requirements.

Passed the Senate April 18, 1989.
Passed the House April 14, 1989.
Approved by the Governor May 5, 1989.
Filed in Office of Secretary of State May 5, 1989.

CHAPTER 265

[Substitute Senate Bill No. 5857]

DEVELOPMENTALLY DISABLED—BOND FUNDED FACILITIES—TRANSFER OF
FIXED ASSETS

AN ACT Relating to proceeds of bonds issued for facilities for persons with sensory, physical, or mental handicaps; and amending RCW 43.99C.045.

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

Sec. 1. Section 8, chapter 221, Laws of 1979 ex. sess. as amended by section 1, chapter 136, Laws of 1980 and RCW 43.99C.045 are each amended to read as follows:

Subject to legislative appropriation, all principal proceeds of the bonds and bond anticipation notes authorized in this chapter shall be administered by the state department of social and health services exclusively for the purposes specified in this chapter and for the payment of expenses incurred in connection with the sale and issuance of the bonds and bond anticipation notes.

In carrying out the purposes of this chapter all counties of the state shall be eligible to participate in the distribution of the bond proceeds. The share coming to each county shall be determined by a division among all counties according to the relation which the population of each county, as shown by the last federal or official state census, whichever is the later, bears to the total combined population of all counties, as shown by such census; except that, each sixth, seventh, or eighth class county shall receive an aggregate amount of up to seventy-five thousand dollars if, through a procedure established in rule, the department has determined there is a demonstrated need and the share determined for such county is less than seventy-five thousand dollars. No single project in a class AA county shall be eligible for more than fifteen percent of such county's total distribution of bond proceeds.

In carrying out the purposes specified in this chapter, the department may use or permit the use of the proceeds by direct expenditures, grants, or loans to any public body, including but not limited to grants to a public body as matching funds in any case where federal, local, or other funds are made available on a matching basis for purposes specified in this chapter.

In carrying out the purpose of this chapter, fixed assets acquired under this chapter, and no longer utilized by the program having custody of the assets, may be transferred to other public bodies either in the same county or another county. Prior to such transfer the department shall first determine if the assets can be used by another program as designated by the department of social and health services in RCW 43.99C.020. Such programs

shall have priority in obtaining the assets to ensure the purpose of this chapter is carried out.

Passed the Senate March 9, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 266

[Substitute Senate Bill No. 5905]

BUILDING CODES—ADOPTION AND AMENDMENT

AN ACT Relating to the building code council; amending RCW 19.27.031, 19.27.060, 19.27.074, 19.27.078, and 19.27.090; and creating a new section.

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

Sec. 1. Section 5, chapter 360, Laws of 1985 and RCW 19.27.031 are each amended to read as follows:

Except as otherwise provided in this chapter, there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference:

(1) Uniform Building Code and Uniform Building Code Standards, (~~(1982 edition;)~~) published by the International Conference of Building Officials;

(2) Uniform Mechanical Code, (~~(1982 edition;)~~) including Chapter 22, Fuel Gas Piping, Appendix B, published by the International Conference of Building Officials;

(3) The Uniform Fire Code and Uniform Fire Code Standards, (~~(1982 edition;)~~) published by the International Conference of Building Officials and the Western Fire Chiefs Association: PROVIDED, That, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles;

(4) The Uniform Plumbing Code and Uniform Plumbing Code Standards, (~~(1982 edition;)~~) published by the International Association of Plumbing and Mechanical Officials: PROVIDED, That chapters 11 and 12 of such code are not adopted; and

(5) The rules and regulations adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically handicapped or elderly persons as provided in RCW 70.92.100 through 70.92.160.

In case of conflict among the codes enumerated in subsections (1), (2), (3), and (4) of this section, the first named code shall govern over those following.

The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074.

The council may issue opinions relating to the codes at the request of a local building official.

Sec. 2. Section 6, chapter 96, Laws of 1974 ex. sess. as last amended by section 12, chapter 462, Laws of 1987 and RCW 19.27.060 are each amended to read as follows:

(1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code.

(a) No amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(3) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single family or multifamily residential buildings: PROVIDED, That in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code.

(4) The provisions of this chapter shall not apply to any building four or more stories high with a B occupancy as defined by the uniform building code, 1982 edition, and with a city fire insurance rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

Sec. 3. Section 2, chapter 360, Laws of 1985 and RCW 19.27.074 are each amended to read as follows:

(1) The state building code council shall:

(a) Adopt and maintain the codes to which reference is made in RCW 19.27.031 in a status which is consistent with the state's interest as set forth in RCW 19.27.020. In maintaining these codes, the council shall regularly review updated versions of the codes referred to in RCW 19.27.031 and other pertinent information and shall amend the codes as deemed appropriate by the council;

(b) Approve or deny all county or city amendments to any code referred to in RCW 19.27.031 to the degree the amendments apply to single family or multifamily residential buildings;

(c) As required by the legislature, develop and adopt any codes relating to buildings; and

(d) Propose a budget for the operation of the state building code council to be submitted to the office of financial management pursuant to RCW 43.88.090.

(2) The state building code council may:

(a) Appoint technical advisory committees which may include members of the council;

(b) Employ permanent and temporary staff and contract for services; and

(c) Conduct research into matters relating to any code or codes referred to in RCW 19.27.031 or any related matter.

All meetings of the state building code council shall be open to the public under the open public meetings act, chapter 42.30 RCW. All actions of the state building code council which adopt or amend any code of state-wide applicability shall be pursuant to the administrative procedure act, chapter (~~34.04~~) 34.05 RCW.

All council decisions relating to the codes enumerated in RCW 19.27.031 shall require approval by at least a majority of the members of the council.

All decisions to adopt or amend codes of state-wide application shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year.

Sec. 4. Section 3, chapter 360, Laws of 1985 and RCW 19.27.078 are each amended to read as follows:

(1) The state building code council shall contract with a private entity to conduct a study and analysis of the codes referred to in RCW 19.27.031 and related regulations of state and local agencies to ascertain the amount and nature of any conflict and inconsistencies. The findings and proposed solutions resulting from this study and analysis shall be submitted to the state building code council no later than September 1, 1987. The state

building code council shall consider these findings and proposed solutions when carrying out its responsibilities under RCW 19.27.074.

(2) The state building code council shall conduct a study of county and city enforcement of the requirements of the codes to which reference is made in RCW 19.27.031. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations. The findings of the study shall be submitted in a report to the governor and the legislature no later than September 1, 1987.

(3) The study required under subsection (2) of this section shall include, but not be limited to, a review of the impact of discretionary building permit requirements imposed by local code enforcement personnel. This review shall be designed to determine the extent, if any, to which such discretionary requirements are based upon (a) the requirements of the state building code or (b) city or county amendments to the state building code.

(4) The state building code council shall conduct a study to identify and define stand-alone ordinances adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031, as adopted and amended by the state building code council. In conducting the study, the council shall consult with representatives from counties, cities, home builders, architects, building officials, and fire officials. To aid in data collection, local governments shall submit fire suppression ordinances, as defined by the state building code council, in effect on March 31, 1989, to the state building code council. The findings of the study shall be submitted in a written report to the house of representatives committee on housing and the senate governmental operations committee no later than November 1, 1989.

(5) The study required under subsection (4) of this section shall include, but not be limited to, a review of ordinances or regulations adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031.

Sec. 5. Section 9, chapter 96, Laws of 1974 ex. sess. and RCW 19.27-.090 are each amended to read as follows:

Local land use and zoning requirements, building setbacks, side and rear-yard requirements, site development, property line requirements, ~~((subdivision))~~ requirements adopted by counties or cities pursuant to chapter 58.17 RCW, snow load requirements, wind load requirements, and local fire zones are specifically reserved to local jurisdictions notwithstanding any other provision of this ~~((1974 act))~~ chapter.

NEW SECTION. Sec. 6. The building code council shall, within one year of the effective date of this act, adopt a process for the review of proposed state-wide amendments to the codes enumerated in RCW 19.27.031, and proposed or enacted local amendments to the codes enumerated in

RCW 19.27.031 as amended and adopted by the state building code council.

Passed the Senate April 18, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 267

[Senate Bill No. 5907]

FIRE PROTECTION DISTRICTS—PARTIAL ANNEXATION INTO CITY OR TOWN

AN ACT Relating to annexations and incorporations that include a portion of a fire protection district; amending RCW 35.02.200 and 35A.14.400; and adding a new section to chapter 35.02 RCW.

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

Sec. 1. Section 35.13.248, chapter 7, Laws of 1965 as last amended by section 19, chapter 234, Laws of 1986 and RCW 35.02.200 are each amended to read as follows:

(1) If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a city or town, the ownership of all assets of the district shall remain in the district and the district shall pay to the city or town within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if the area annexed or incorporated includes less than five percent of the (~~assessed value of the real property~~) area of the district, no payment shall be made to the city or town except as provided in section 3 of this act.

(2) As provided in RCW 35.02.210, the fire protection district from which territory is removed as a result of an incorporation or annexation shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

(3) For the purposes of this section, the word "assets" shall mean the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, the same to be determined by usual and accepted accounting methods. The amount of said liability shall be determined by reference to the fire district's balance sheet, produced in the regular course of business, which is nearest in time to the certification of the annexation of fire district territory by the city or town.

Sec. 2. Section 35A.14.400, chapter 119, Laws of 1967 ex. sess. and RCW 35A.14.400 are each amended to read as follows:

If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a code city, the ownership of all assets of the district shall remain in the district and the district shall pay to the code city within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if less than five percent of the area of the district is affected, no payment shall be made to the code city except as provided in section 3 of this act. The fire protection district shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

NEW SECTION. Sec. 3. A new section is added to chapter 35.02 RCW to read as follows:

(1) A distribution of assets from the fire protection district to the city or town shall occur as provided in this section upon the annexation or incorporation of an area by the city or town that constitutes less than five percent of the area of the fire protection district upon the adoption of a resolution by the city or town finding that the annexation or incorporation will impose a significant increase in the fire suppression responsibilities of the city or town with a corresponding reduction in fire suppression responsibilities by the fire protection district. Such a resolution must be adopted within sixty days of the effective date of the annexation, or within sixty days of the official date of incorporation of the city. If the fire protection district does not concur in the finding within sixty days of when a copy of the resolution is submitted to the board of commissioners, arbitration shall proceed under subsection (3) of this section over this issue.

(2) An agreement on the distribution of assets from the fire protection district to the city or town shall be entered into by the city or town and the fire protection district within ninety days of the concurrence by the fire protection district under subsection (1) of this section, or within ninety days of a decision by the arbitrators under subsection (3) of this section that a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the incorporation or annexation. A distribution shall be based upon the extent of the increased fire suppression responsibilities with a corresponding reduction in fire suppression responsibilities by the fire protection district, and shall consider the impact of any debt obligation that may exist on the property that is so annexed or incorporated. If an agreement is not entered into after this ninety-day period,

arbitration shall proceed under subsection (3) of this section concerning this issue unless both parties have agreed to an extension of this period.

(3) Arbitration shall proceed under this subsection over the issue of whether a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the annexation or incorporation with a corresponding reduction in fire suppression responsibilities by the fire protection district, or over the distribution of assets from the fire protection district to the city or town if such a significant increase in fire protection responsibilities will be imposed. A board of arbitrators shall be established for an arbitration that is required under this section. The board of arbitrators shall consist of three persons, one of whom is appointed by the city or town within sixty days of the date when arbitration is required, one of whom is appointed by the fire protection district within sixty days of the date when arbitration is required, and one of whom is appointed by agreement of the other two arbitrators within thirty days of the appointment of the last of these other two arbitrators who is so appointed. If the two are unable to agree on the appointment of the third arbitrator within this thirty-day period, then the third arbitrator shall be appointed by a judge in the superior court of the county within which all or the greatest portion of the area that was so annexed or incorporated lies. The determination by the board of arbitrators shall be binding on both the city or town and the fire protection district.

Passed the Senate April 18, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 268

[Senate Bill No. 5172]

ENERGY CONSERVATION—UTILITIES—ASSISTANCE TO OWNERS OF EQUIPMENT

AN ACT Relating to energy conservation; amending RCW 35.92.360 and 54.16.280; adding a new section to chapter 19.27A RCW; and declaring an emergency.

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

Sec. 1. Section 2, chapter 239, Laws of 1979 ex. sess. and RCW 35.92.360 are each amended to read as follows:

Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of ((residential)) structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy

saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the ((~~residential~~)) structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length.

Sec. 2. Section 3, chapter 239, Laws of 1979 ex. sess. and RCW 54.16.280 are each amended to read as follows:

Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of ((~~residential~~)) structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the district could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the ((residential)) structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length.

***NEW SECTION.** Sec. 3. A new section is added to chapter 19.27A RCW to read as follows:

In order to improve energy efficiency in residential structures, an entity in the state of Washington engaged in the generation, sale, or distribution of energy may provide financial or other assistance for the planting of trees that will cast shade on residential structures in the summer. The assistance may be given to the owner of the residential structure or to a community group engaged in the planting of trees.

*Sec. 3 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 21, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 5, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1989.

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

"I am returning herewith, without my approval as to section 3, Senate Bill No. 5172, entitled:

"AN ACT Relating to energy conservation."

Sections 1 and 2 of this bill will allow the implementation of the 1988 voter-approved Constitutional Amendment, HJR 4223 which extends the conservation authority to add equipment to the prior authorization for structures. Section 4 makes the bill effective immediately. This legislation was requested by the State Energy Office and was supported by my office.

Section 3 is an amendment which authorizes financial assistance for the planting of trees that will cast shade on residential structures in the summer. Shade trees are aesthetically pleasing and have some energy benefits. However, the inclusion of shade trees in this bill arguably goes beyond the public understanding of conservation under the constitutional amendment permitting loans for "... materials and equipment for conservation ...".

I would be favorably inclined to review this issue if, after further public discussion, shade trees or other energy conservation methods are shown to be and generally recognized as cost effective.

With the exception of section 3, Senate Bill No. 5172 is approved."

CHAPTER 269

[House Bill No. 1777]

ALTERNATIVE RESIDENTIAL PLACEMENT OF CHILDREN—DEPARTMENT OF SOCIAL AND HEALTH SERVICES—DUTIES

AN ACT Relating to child welfare services; and amending RCW 13.32A.150, 13.32A.160, 13.32A.170, 13.32A.250, 13.32A.190, and 28A.87.120.

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

Sec. 1. Section 29, chapter 155, Laws of 1979 as amended by section 11, chapter 298, Laws of 1981 and RCW 13.32A.150 are each amended to read as follows:

(1) Except as otherwise provided in this section the juvenile court shall not accept the filing of an alternative residential placement petition by the child or the parents, unless verification is provided that a family assessment has been completed by the department. The family assessment shall be aimed at family reconciliation and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section.

(2) A child or a child's parent may file with the juvenile court a petition to approve an alternative residential placement for the child outside the parent's home. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition shall only ask that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve such placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an alternative residential placement.

Sec. 2. Section 30, chapter 155, Laws of 1979 and RCW 13.32A.160 are each amended to read as follows:

(1) When a proper petition is filed under RCW 13.32A.120, 13.32A.140₂ or 13.32A.150 the juvenile court shall: (a) Schedule a date for a fact-finding hearing; notify the parent (~~and~~), child, and the department of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving an alternative residential placement petition; and (e) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of an alternative residential placement petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the alternative residential placement petition by the court. Any placement may be reviewed by the court within three court days upon the request of the juvenile or the juvenile's parent.

Sec. 3. Section 31, chapter 155, Laws of 1979 as last amended by section 1, chapter 524, Laws of 1987 and RCW 13.32A.170 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper petition and may approve or deny alternative residential placement giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

- (a) The petition is not capricious;
- (b) The petitioner, if a parent or the child, has made a reasonable effort to resolve the conflict;
- (c) The conflict which exists cannot be resolved by delivery of services to the family during continued placement of the child in the parental home; (~~and~~)
- (d) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and
- (e) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent.

(2) The order approving out-of-home placement shall direct the department to submit a disposition plan for a three-month placement of the child that is designed to reunite the family and resolve the family conflict. Such plan shall delineate any conditions or limitations on parental involvement. In making the order, the court shall further direct the department to make recommendations, as to which agency or person should have physical custody of the child, as to which parental powers should be awarded to such agency or person, and as to parental visitation rights. The court may direct the department to consider the cultural heritage of the child in making its recommendations.

(3) The hearing to consider the recommendations of the department for a three-month disposition plan shall be set no later than fourteen days after the approval of the court of a petition to approve alternative residential placement. Each party shall be notified of the time and place of such disposition hearing.

(4) If the court approves or denies a petition for an alternative residential placement, a written statement of the reasons shall be filed. If the court denies a petition requesting that a child be placed in a residence other than the home of his or her parent, the court shall enter an order requiring the child to remain at or return to the home of his or her parent.

(5) If the court denies the petition, the court shall impress upon the party filing the petition of the legislative intent to restrict the proceedings to situations where a family conflict is so great that it cannot be resolved by the provision of in-home services.

(6) A child who fails to comply with a court order directing that the child remain at or return to the home of his or her parent shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within ninety calendar days after the day of the order.

(7) The department may request, and the juvenile court may grant, dismissal of an alternative residential placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

Sec. 4. Section 14, chapter 298, Laws of 1981 and RCW 13.32A.250 are each amended to read as follows:

(1) In all alternative residential placement proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of an alternative residential placement order. The court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is punishable as contempt.

~~((2))~~ (3) Contempt under this section is punishable by a fine of up to one hundred dollars and imprisonment for up to seven days, or both.

~~((3))~~ (4) A child found in contempt under this section shall be imprisoned only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

~~((4))~~ (5) The procedure in a contempt proceeding held under this section is governed by RCW 7.20.040 through 7.20.080, as now law or hereafter amended.

~~((5))~~ (6) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

Sec. 5. Section 33, chapter 155, Laws of 1979 as last amended by section 2, chapter 188, Laws of 1984 and RCW 13.32A.190 are each amended to read as follows:

(1) Upon making a dispositional order under RCW 13.32A.180, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in mediation programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with the goal of resolving the conflict and reuniting the family which governed the initial approval. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court is authorized to discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have displayed concerted efforts to utilize services and resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order that the child return to the home of the parent at the expiration of the placement. If continued out-of-home placement is disapproved, the court shall enter an order requiring that the child return to the home of the child's parent.

(4) The department may request, and the juvenile court may grant, dismissal of an alternative residential placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

Sec. 6. Section 28A.87.120, chapter 223, Laws of 1969 ex. sess. as amended by section 1, chapter 38, Laws of 1982 and RCW 28A.87.120 are each amended to read as follows:

(1) Any pupil who shall deface or otherwise injure any school property, shall be liable to suspension and punishment. Any school district whose property has been lost or willfully cut, defaced, or injured, may withhold the grades, diploma, and transcripts of the pupil responsible for the damage or loss until the pupil or the pupil's parent or guardian has paid for the damages. When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of the payment of monetary damages. Upon completion of voluntary work the grades, diploma, and transcripts of the pupil shall be released. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(2) Before any penalties are assessed under this section, a school district board of directors shall adopt procedures which insure that pupils' rights to due process are protected.

(3) If the department of social and health services or a child-placing agency licensed by the department has been granted custody of a child, that child's records, if requested by the department or agency, are not to be withheld for nonpayment of school fees or any other reason.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 5, 1989.

Filed in Office of Secretary of State May 5, 1989.

CHAPTER 270

[Substitute House Bill No. 1619]

ALCOHOLISM AND OTHER DRUG ADDICTION—PREVENTION AND TREATMENT SERVICES

AN ACT Relating to alcoholism and other drug addiction; amending RCW 70.96A.010, 70.96A.020, 70.96A.030, 70.96A.040, 70.96A.050, 70.96A.060, 70.96A.070, 70.96A.080, 70.96A.090, 70.96A.100, 70.96A.110, 70.96A.120, 70.96A.140, 70.96A.150, 70.96A.160, 70.96A.170, 70.96A.180, 70.96A.190, and 18.130.180; adding new sections to chapter 70.96A RCW; and repealing RCW 69.54.010, 69.54.020, 69.54.030, 69.54.033, 69.54.035, 69.54.040, 69.54.050, 69.54.060, 69.54.070, 69.54.080, 69.54.090, 69.54.100, 69.54.110, 69.54.120, 69.54.130, 70.96.021, 70.96.085, 70.96.092, 70.96.094, 70.96.095, 70.96.096, 70.96.150, 70.96.160, 70.96.170, 70.96.180, 70.96.190, 70.96.200, 70.96A.200, 70.96A.210, 70.96A.220, and 70.96A.900.

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

NEW SECTION. Sec. 1. The legislature finds that the use of alcohol and other drugs has become a serious threat to the health of the citizens of the state of Washington. The use of psychoactive chemicals has been found to be a prime factor in the current AIDS epidemic. Therefore, a comprehensive statute to deal with alcoholism and other drug addiction is necessary.

The legislature agrees with the 1987 resolution of the American Medical Association that endorses the proposition that all chemical dependencies, including alcoholism, are diseases. It is the intent of the legislature to end the sharp distinctions between alcoholism services and other drug addiction services, to recognize that chemical dependency is a disease, and to insure that prevention and treatment services are available and are of high quality. It is the purpose of this chapter to provide the financial assistance necessary to enable the department of social and health services to provide a discrete program of alcoholism and other drug addiction services.

***Sec. 2. Section 1, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.010 are each amended to read as follows:**

It is the policy of this state that alcoholics, drug addicts, and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages or addiction to other psychoactive substances but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

***Sec. 2 was vetoed, see message at end of chapter.**

Sec. 3. Section 2, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.020 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who (~~habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent~~

that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;)) suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment ((facility)) program" means a discrete program of chemical dependency treatment provided by a treatment ((agency operating under the direction and control of)) program certified by the department of social and health services ((or providing treatment)) as meeting standards adopted under this chapter ((through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3));).

((3)) "Secretary" means the secretary of the department of social and health services;)

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

((5)) (7) "Director" means the ((director of the division of alcoholism;)) person administering the chemical dependency program within the department.

((6)) (8) "Drug addict" means a person who suffers from the disease of drug addiction.

(9) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

• (10) "Emergency service patrol" means a patrol established under RCW 70.96A.170(;;).

((7)) (11) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and constitutes a danger to himself or herself, to any other person, or to property(;;).

~~((8))~~ (12) "Incompetent person" means a person who has been adjudged incompetent by the superior court(~~(;)~~).

~~((9))~~ (13) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol(~~(;)~~) or other psychoactive chemicals.

~~((10))~~ (14) "Secretary" means the department of social and health services.

(15) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient(~~(-intermediate, and inpatient and emergency))~~ services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

Sec. 4. Section 3, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.030 are each amended to read as follows:

A discrete program of (~~(alcoholism))~~ chemical dependency is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism and other drug addiction problems or the organization or administration of treatment services for persons suffering from alcoholism or other drug addiction problems.

Sec. 5. Section 4, chapter 122, Laws of 1972 ex. sess. as amended by section 2, chapter 193, Laws of 1988 and RCW 70.96A.040 are each amended to read as follows:

The department, in the operation of the (~~(alcoholism))~~ chemical dependency program may:

(1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons(~~(; and to)~~);

(3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment (~~(facilities))~~ programs;

~~((3))~~ (4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

~~((4))~~ (6) Administer or supervise the administration of the provisions relating to alcoholics, other drug addicts, and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

~~((5))~~ (7) Coordinate its activities and cooperate with ~~((alcoholism))~~ chemical dependency programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of ~~((alcoholism))~~ chemical dependency programs;

~~((6))~~ (8) Keep records and engage in research and the gathering of relevant statistics;

~~((7))~~ (9) Do other acts and things necessary or convenient to execute the authority expressly granted to it; ~~(and~~

~~(8))~~ (10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment ~~((facilities for alcoholics, persons incapacitated by alcohol, and intoxicated persons))~~ programs.

Sec. 6. Section 5, chapter 122, Laws of 1972 ex. sess. as amended by section 7, chapter 176, Laws of 1979 ex. sess. and RCW 70.96A.050 are each amended to read as follows:

The department shall:

(1) Develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system(=);

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment ((programs)) for employees of state and local governments and businesses and industries in the state;

(13) ~~((Utilize))~~ Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a state-wide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of ~~((alcoholism))~~ chemical dependency treatment programs.

NEW SECTION. Sec. 7. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements to accomplish the purposes of this chapter.

Sec. 8. Section 6, chapter 122, Laws of 1972 ex. sess. as amended by section 220, chapter 158, Laws of 1979 and RCW 70.96A.060 are each amended to read as follows:

(1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his or her designee, the director of licensing or his or her designee, the executive secretary of the Washington state law enforcement training commission or his or her designee, and one or more designees (not to exceed three) of the secretary ~~((of the department of social and health services))~~, one of whom shall be the director of the chemical dependency program. The committee shall meet at least twice annually at the call of the secretary, or his or her designee, who shall be its ~~((chairman))~~ chair. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and other drug addiction, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and other drug addiction, for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the prevention of alcoholism and other chemical dependency, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and other drug addiction, the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons consistent with the policy of this chapter.

Sec. 9. Section 7, chapter 122, Laws of 1972 ex. sess. as amended by section 1, chapter 155, Laws of 1973 1st ex. sess. and RCW 70.96A.070 are each amended to read as follows:

Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members, at least two of whom shall be recovered alcoholics or other recovered drug addicts and two of whom shall be members of recognized organizations involved with problems of alcoholism and other drug addiction. The remaining members shall be broadly representative of the community, shall include representation from business and industry, organized labor, the judiciary, and minority groups, chosen for their demonstrated concern with alcoholism and other drug addiction problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his or her consideration the rules (~~and regulations~~) for the implementation of the (~~alcoholism~~) chemical dependency program(~~s~~) of the department. The secretary shall thereafter adopt such rules (~~and regulations as shall~~) that, in his or her judgment properly implement the (~~alcoholism~~) chemical dependency program(~~s~~) of the department consistent with the welfare of those to be served, the legislative intent, and the public good.

NEW SECTION. Sec. 10. All facilities, plans, or programs receiving financial assistance under RCW 70.96A.040 must be approved by the department before any state funds may be used to provide the financial assistance. If the facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for the facility, plan, or program shall be made available for allocation to facilities,

plans, or programs that have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan, or program, the excess shall be made available for allocation to other approved facilities, plans, or programs.

NEW SECTION. Sec. 11. Except as provided in this chapter, the secretary shall not approve any facility, plan, or program for financial assistance under RCW 70.96A.040 unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require the facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services.

NEW SECTION. Sec. 12. A city, town, or county that does not have its own facility or program for the treatment and rehabilitation of alcoholics and other drug addicts may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the facility or program.

NEW SECTION. Sec. 13. To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a program of alcoholism and other drug addiction approved by the alcoholism and other drug addiction board authorized by section 15 of this act and the secretary.

****NEW SECTION. Sec. 14. The department shall not refuse admission for diagnosis, evaluation, guidance, or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the chemical dependency program.***

**Sec. 14 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 15. (1) A county or combination of counties acting jointly by agreement, referred to as "county" in this chapter, may create an alcoholism and other drug addiction board. This board may also be designated as a board for other related purposes.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recovered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until

their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(3) The alcoholism and other drug addiction board shall:

(a) Conduct public hearings and other investigations to determine the needs and priorities of county citizens;

(b) Prepare and recommend to the county legislative authority for approval, all plans, budgets, and applications by the county to the department and other state agencies on behalf of the county alcoholism and other drug addiction program;

(c) Monitor the implementation of the alcoholism and other drug addiction plan and evaluate the performance of the alcoholism and drug addiction program at least annually;

(d) Advise the county legislative authority and county alcoholism and other drug addiction program coordinator on matters relating to the alcoholism and other drug addiction program, including prevention and education;

(e) Nominate individuals to the county legislative authority for the position of county alcoholism and other drug addiction program coordinator. The nominees should have training and experience in the administration of alcoholism and other drug addiction services and shall meet the minimum qualifications established by rule of the department;

(f) Carry out other duties that the department may prescribe by rule.

NEW SECTION. Sec. 16. (1) The chief executive officer of the county alcoholism and other drug addiction program shall be the county alcoholism and other drug addiction program coordinator. The coordinator shall:

(a) In consultation with the county alcoholism and other drug addiction board, provide general supervision over the county alcoholism and other drug addiction program;

(b) Prepare plans and applications for funds to support the alcoholism and other drug addiction program in consultation with the county alcoholism and other drug addiction board;

(c) Monitor the delivery of services to assure conformance with plans and contracts and, at the discretion of the board, but at least annually, report to the alcoholism and other drug addiction board the results of the monitoring;

(d) Provide staff support to the county alcoholism and other drug addiction board.

(2) The county alcoholism and other drug addiction program coordinator shall be appointed by the county legislative authority from nominations by the alcoholism and other drug addiction program board. The coordinator may serve on either a full-time or part-time basis. Only with the prior approval of the secretary may the coordinator be an employee of a

government or private agency under contract with the department to provide alcoholism or other drug addiction services.

NEW SECTION. Sec. 17. (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under section 15 of this act and appoint a county alcoholism and other drug addiction program coordinator under section 16 of this act.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

- (a) It shall describe the services and activities to be provided;
- (b) It shall include anticipated expenditures and revenues;
- (c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;
- (d) It shall reflect maximum effective use of existing services and facilities; and
- (e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase

Sec. 18. Section 8, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.080 are each amended to read as follows:

(1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated discrete program for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

(a) ~~((Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital or licensed medical institution:))~~

Detoxification;

(b) ~~((Inpatient))~~ Residential treatment; and

(c) ~~((Intermediate treatment; and~~

~~(d)))~~ Outpatient ((and follow-up)) treatment.

(3) ~~((The department shall provide for adequate and appropriate treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons admitted under RCW 70.96A.110 through 70.96A.140. Treatment may not be provided at a jail or prison except for inmates.~~

~~(4)))~~ All appropriate public and private resources shall be coordinated with and ((utilized)) used in the program ((if)) when possible.

(5) ~~((The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.~~

~~(6)))~~ (4) The department may contract for the use of ((any facility as)) an approved ((public)) treatment ((facility)) program or other individual or organization if the secretary((, subject to the policies of the department;)) considers this to be an effective and economical course to follow.

Sec. 19. Section 9, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.090 are each amended to read as follows:

(1) The department shall adopt rules establishing standards for approved treatment ~~((facilities that must be met for a treatment facility to be))~~ programs, the process for the review and inspection program applying to the department for certification as an approved ((as a public or private)) treatment ((facility)) program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may either grant or deny a certification of approval or revoke or suspend certification previously granted after investigation to ascertain whether or not the treatment program meets the standards adopted under this chapter.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment ((facilities)) programs at reasonable times and in a reasonable manner.

~~((3))~~ (7) The department shall maintain and periodically publish a current list of approved ((public and private)) treatment ((facilities at reasonable times and in a reasonable manner)) programs.

~~((4))~~ (8) Each approved ((public and private)) treatment ((facility)) program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved ((public or private)) treatment ((facility)) program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment ((facilities)) programs, and its ((approval)) certification revoked or suspended.

~~((5) The division, after holding a hearing, may suspend, revoke, limit, or restrict an approval, or without hearing, refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder.~~

~~((6))~~ (9) The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

~~((7))~~ (10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment ((facility)) program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

NEW SECTION. Sec. 20. The state of Washington declares that there is no fundamental right to methadone treatment. The state of Washington further declares that while methadone is an addictive substance, that it nevertheless has several legal, important, and justified uses and that one of its appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids.

Because methadone is addictive and is listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington and authorizing counties on behalf of their citizens have the legal obligation and right to

regulate the use of methadone. The state of Washington declares its authority to control and regulate carefully, in cooperation with the authorizing counties, all clinical uses of methadone in the treatment of opium addiction. Further, the state declares that the goal of methadone treatment is drug-free living for the individuals who participate in the treatment program.

NEW SECTION. Sec. 21. (1) A county legislative authority may prohibit methadone treatment in that county. The department shall not certify a methadone treatment program in a county where the county legislative authority has prohibited methadone treatment. If a county legislative authority authorizes methadone treatment programs, it shall limit by ordinance the number of methadone treatment programs operating in that county by limiting the number of licenses granted in that county. If a county has authorized methadone treatment programs in that county, it shall only license methadone treatment programs that comply with the department's operating and treatment standards under this section and section 22 of this act. A county that authorizes methadone treatment may operate the programs directly or through a local health department or health district or it may authorize certified methadone treatment programs that the county licenses to provide the services within the county. Counties shall monitor methadone treatment programs for compliance with the department's operating and treatment regulations under this section and section 22 of this act.

(2) A county that authorizes methadone treatment programs shall develop and enact by ordinance licensing standards, consistent with this chapter and the operating and treatment standards adopted under this chapter, that govern the application for, issuance of, renewal of, and revocation of the licenses. Certified programs existing before May 18, 1987, applying for renewal of licensure in subsequent years, that maintain certification and meet all other requirements for licensure, shall be given preference.

(3) In certifying programs, the department shall not discriminate against a methadone program on the basis of its corporate structure. In licensing programs, the county shall not discriminate against a methadone program on the basis of its corporate structure.

(4) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial. A program applying for a license or a contract from a county that has been denied the license or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(5) A license is effective for one calendar year from the date of issuance. The license shall be renewed in accordance with the provisions of this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

NEW SECTION. Sec. 22. (1) The department, in consultation with methadone treatment service providers and counties authorizing methadone treatment programs, shall establish state-wide treatment standards for methadone treatment programs. The department and counties that authorize methadone treatment programs shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter and the treatment standard authorized by this chapter. A methadone treatment program shall not have a caseload in excess of three hundred fifty persons.

(2) The department, in consultation with methadone treatment programs and counties authorizing methadone treatment programs, shall establish state-wide operating standards for methadone treatment programs. The department and counties that authorize methadone treatment programs shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and authorizing counties to monitor certified and licensed methadone treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the methadone treatment programs upon the business and residential neighborhoods in which the program is located.

Sec. 23. Section 10, chapter 122, Laws of 1972 ex. sess. and RCW 70-.96A.100 are each amended to read as follows:

The secretary shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient ~~((or intermediate))~~ treatment, unless he or she is found to require ~~((inpatient))~~ residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and ~~((utilize))~~ use other appropriate treatment.

NEW SECTION. Sec. 24. Any person fourteen years of age or older may give consent for himself or herself to the furnishing of counseling, care, treatment, or rehabilitation by a treatment program or by any person. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age is not necessary to authorize the care, except that the person shall not become a resident of the treatment program without such permission except as provided in RCW 70.96A.120. The parent, parents, or legal guardian of a person less than eighteen years of age are not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the counseling, care, treatment, or rehabilitation.

Sec. 25. Section 11, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.110 are each amended to read as follows:

(1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment ((facility)) program. If the proposed patient is a minor or an incompetent person, he or she, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment ((facility)) program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment ((facility)) program, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment ((facility)) program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment ((facility)) program, he or she shall be encouraged to consent to appropriate outpatient ((or intermediate)) treatment. If it appears to the administrator in charge of the treatment ((facility)) program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment ((facility)) program, with or against the advice of the administrator in charge of the facility, the department may make reasonable provisions for his or her transportation to another facility or to his or her home. If ((~~he~~)) the patient has no home he or she should be assisted in obtaining shelter. If ((~~he~~)) the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant.

***Sec. 26. Section 12, chapter 122, Laws of 1972 ex. sess. as last amended by section 13, chapter 439, Laws of 1987 and RCW 70.96A.120 are each amended to read as follows:**

(1) An intoxicated person may come voluntarily to an approved treatment ((facility)) program for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the

proffered help, may be assisted to his or her home, an approved treatment ((facility)) program, or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself or herself of the provisions of RCW 46-.20.308, a person who appears to be incapacitated by alcohol and who is in a public place or who has threatened, attempted, or inflicted physical harm on another, shall be taken into protective custody by the police or the emergency service patrol and as soon as practicable, but in no event beyond eight hours brought to an approved treatment ((facility)) program for treatment. If no approved treatment ((facility)) program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The police or the emergency service patrol, in detaining the person and in taking him or her to an approved treatment ((facility)) program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining officer or member of an emergency patrol may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment ((facility)) program shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment ((facility)) program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated by alcohol at the time of his or her admission or to have become incapacitated at any time after his or her admission, may not be detained at the ((facility)) program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140(~~(, as now or hereafter amended: PROVIDED, That)~~). However, the treatment personnel at the ((facility)) program are authorized to use such reasonable physical restraint as may be necessary to retain a person incapacitated by alcohol at ((such facility)) the program for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the ((facility)) program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment ((facility)) program, is not referred to another health facility, and has no funds, may be

taken to his or her home, if any. If he or she has no home, the approved treatment ((facility)) program shall assist him or her in obtaining shelter.

(6) If a patient is admitted to an approved treatment ((facility)) program, his or her family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The police, members of the emergency service, or treatment ((facility)) program personnel, who in good faith act in compliance with this chapter are performing in the course of their official duty and are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment ((facility)) program determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

*Sec. 26 was vetoed, see message at end of chapter.

*Sec. 27. Section 14, chapter 122, Laws of 1972 ex. sess. as last amended by section 14, chapter 439, Laws of 1987 and RCW 70.96A.140 are each amended to read as follows:

(1) When the person in charge of an approved treatment ((facility)) program, or his or her designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his or her designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. If the person in charge, or his or her designee, finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020. If placement in an approved alcohol treatment ((facility)) program is deemed appropriate, the petition shall allege that the person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for the voluntary treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the petitioning ((facility)) program or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than three and no more than seven days after the date the petition was

filed unless the person petitioned against is presently being detained by the ((facility)) program, pursuant to RCW 70.96A.120, (~~as now or hereafter amended,~~) in which case the hearing shall be held within seventy-two hours of the filing of the petition(~~(: PROVIDED, HOWEVER, That the above specified)~~). The seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays(~~(: PROVIDED FURTHER, That)~~). However, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment ((facility)) program on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her(~~(:)~~). In this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person (~~(out-of)~~) outside the courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court-appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment ((facility)) program. It shall not order commitment of a person unless it determines that an approved treatment ((facility)) program is able to provide adequate and appropriate treatment for him or her and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the ((facility)) program for treatment for a period of thirty days unless sooner discharged. At the end of the thirty-day period, he or she shall be discharged automatically unless the ((facility)) program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the ((facility)) program shall apply

for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) of this section who has not been discharged by the ((facility)) program before the end of the ninety-day period shall be discharged at the expiration of that period unless the ((facility)) program, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the ((facility)) program shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6) of this section, the court shall fix a date for hearing no less than three and no more than seven days after the date the petition was filed(~~(-PROVIDED, That)~~). However, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment ((facility)) program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(8) The ((facility)) program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment ((facility)) program to another if transfer is medically advisable.

(9) A person committed to the custody of a ((facility)) program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he or she is no longer an alcoholic or the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(10) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided

by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(11) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(12) The venue for proceedings under this section is the county in which person to be committed resides or is present.

*Sec. 27 was vetoed, see message at end of chapter.

*Sec. 28. Section 15, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.150 are each amended to read as follows:

(1) ~~((The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.))~~ When an individual submits himself or herself for care, treatment, counseling, or rehabilitation to an organization, institution, or corporation, public or private, approved under this chapter, or a person licensed or certified by the state whose principal function is the care, treatment, counseling, or rehabilitation of alcoholics and other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, or the providing of medical, psychological, or social counseling or treatment, notwithstanding any other provision of law, that individual is guaranteed confidentiality. No such person, organization, institution, or corporation, or their agents, acting in the scope and course of their duties, providing such care, treatment, counseling, or rehabilitation may divulge nor may they be required to provide specific information concerning individuals being cared for, treated, counseled, or rehabilitated, nor may pharmacists or their agents provide such information if they become aware of or receive such information when requested to or for the purpose of providing products or performing services relevant to that care, treatment, counseling, or rehabilitation. If a person, organization, institution, or corporation, or their agents, breaches confidentiality as provided for in this section, that information and any product of it is not admissible as evidence and shall not be considered in a criminal proceeding. The fact of an individual of authorized age being cared for, treated, counseled, or rehabilitated under this chapter shall likewise be held confidential and is not admissible as evidence and shall not be considered in a criminal proceeding.

(2) Confidentiality provided for by this section may be waived by the individual, if the waiver is freely and voluntarily made, and with full prior information as to the consequences of the waiver.

(3) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(4) Nothing contained in this chapter relieves a person or firm from the requirements under federal and state drug laws and regulations for the keeping of records and the responsibility for the accountability of drugs received and dispensed. Such records, insofar as they contain confidential information under this chapter, are available only to state and federal drug inspectors, who shall not divulge the information as is contained in these records, including the identification of individuals, except (a) upon subpoena in a court or administrative proceeding to which the person to whom the prescription, orders, or other records relate is a party, or (b) when the information reasonably leads to the conclusion that there has been a violation of chapter 69.50 RCW, the information may be referred to other law enforcement officers.

(5) Nothing contained in this chapter prohibits or may be construed to prohibit the divulging of information concerning the neglect or physical or sexual abuse of a child as required by chapter 26.44 RCW.

*Sec. 28 was vetoed, see message at end of chapter.

Sec. 29. Section 16, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.160 are each amended to read as follows:

(1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment ((facility)) program shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment ((facility)) program may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment ((facilities)) programs.

Sec. 30. Section 17, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.170 are each amended to read as follows:

(1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons

who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment ~~((facilities))~~ programs.

(2) The secretary shall adopt rules pursuant to chapter ~~((34.04))~~ 34.05 RCW for the establishment, training, and conduct of emergency service patrols.

Sec. 31. Section 18, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.180 are each amended to read as follows:

(1) If treatment is provided by an approved treatment ~~((facility))~~ program or emergency treatment is provided by a ~~((facility))~~ program under RCW 70.96A.080(2)(a), and the patient has not paid or is unable to pay the charge therefor, the ~~((facility))~~ program is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the ~~((facility))~~ program because of the treatment provided to the patient.

(2) A patient in a ~~((facility))~~ program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the ~~((facility))~~ program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support.

Sec. 32. Section 19, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.190 are each amended to read as follows:

(1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being ~~((a common drunkard))~~ an alcoholic or drug addict, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or other psychoactive chemicals, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or other psychoactive chemicals at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense.

Sec. 33. Section 18, chapter 279, Laws of 1984 as amended by section 10, chapter 259, Laws of 1986 and RCW 18.130.180 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, (~~the addiction to or~~) diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;
or

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the disciplining authority or an assurance of discontinuance entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The ~~((willful))~~ willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by ~~((willful))~~ willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(23) ~~((Drunkenness or habitual intemperance in the use of alcohol or addiction to alcohol))~~ Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient.

NEW SECTION. Sec. 34. Sections 1, 7, 10 through 17, 20 through 22, and 24 of this act are each added to chapter 70.96A RCW.

NEW SECTION. Sec. 35. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 304, Laws of 1971 ex. sess., section 13, chapter 193, Laws of 1982, section 1, chapter 410, Laws of 1987 and RCW 69.54-.010;

(2) Section 2, chapter 304, Laws of 1971 ex. sess., section 14, chapter 193, Laws of 1982 and RCW 69.54.020;

(3) Section 3, chapter 304, Laws of 1971 ex. sess., section 2, chapter 53, Laws of 1986, section 2, chapter 410, Laws of 1987 and RCW 69.54-.030;

(4) Section 3, chapter 410, Laws of 1987 and RCW 69.54.033;

(5) Section 1, chapter 53, Laws of 1986, section 4, chapter 410, Laws of 1987 and RCW 69.54.035;

(6) Section 4, chapter 304, Laws of 1971 ex. sess., section 15, chapter 193, Laws of 1982, section 1, chapter 193, Laws of 1988 and RCW 69.54-.040;

(7) Section 5, chapter 304, Laws of 1971 ex. sess., section 16, chapter 193, Laws of 1982 and RCW 69.54.050;

(8) Section 8, chapter 304, Laws of 1971 ex. sess., section 17, chapter 193, Laws of 1982 and RCW 69.54.060;

(9) Section 9, chapter 304, Laws of 1971 ex. sess., section 18, chapter 193, Laws of 1982 and RCW 69.54.070;

(10) Section 10, chapter 304, Laws of 1971 ex. sess., section 19, chapter 193, Laws of 1982 and RCW 69.54.080;

(11) Section 11, chapter 304, Laws of 1971 ex. sess., section 20, chapter 193, Laws of 1982 and RCW 69.54.090;

(12) Section 8, chapter 193, Laws of 1982 and RCW 69.54.100;

(13) Section 11, chapter 193, Laws of 1982 and RCW 69.54.110;

(14) Section 9, chapter 193, Laws of 1982, section 1, chapter 148, Laws of 1983 and RCW 69.54.120;

(15) Section 10, chapter 193, Laws of 1982 and RCW 69.54.130;

(16) Section 2, chapter 193, Laws of 1982 and RCW 70.96.021;

(17) Section 1, chapter 143, Laws of 1965 ex. sess., section 124, chapter 141, Laws of 1979 and RCW 70.96.085;

(18) Section 1, chapter 104, Laws of 1971 ex. sess. and RCW 70.96-.092;

(19) Section 2, chapter 104, Laws of 1971 ex. sess. and RCW 70.96-.094;

(20) Section 1, chapter 77, Laws of 1972 ex. sess. and RCW 70.96-.095;

(21) Section 2, chapter 77, Laws of 1972 ex. sess., section 3, chapter 155, Laws of 1973 1st ex. sess. and RCW 70.96.096;

- (22) Section 15, chapter 85, Laws of 1959 and RCW 70.96.150;
- (23) Section 2, chapter 155, Laws of 1973 1st ex. sess., section 1, chapter 193, Laws of 1982 and RCW 70.96.160;
- (24) Section 3, chapter 193, Laws of 1982 and RCW 70.96.170;
- (25) Section 4, chapter 193, Laws of 1982 and RCW 70.96.180;
- (26) Section 6, chapter 193, Laws of 1982 and RCW 70.96.190;
- (27) Section 5, chapter 193, Laws of 1982 and RCW 70.96.200;
- (28) Section 23, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.200;
- (29) Section 24, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.210;
- (30) Section 25, chapter 122, Laws of 1972 ex. sess., section 172, chapter 151, Laws of 1979 and RCW 70.96A.220; and
- (31) Section 21, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.900.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 7, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 7, 1989.

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

"I am returning herewith, without my approval as to sections 2, 14, 26, 27, and 28, Engrossed Substitute House Bill No. 1619 entitled:

"AN ACT Relating to alcoholism and other drug addiction."

These five sections each conflict with amendments to the same statutes which are made in Engrossed Second Substitute House Bill No. 1793, the Omnibus Drug Act, and Substitute Senate Bill No. 5469. This bill is a housekeeping recodification bill, while the Omnibus Drug Act and Substitute Senate Bill No. 5469 contain substantive modifications reflecting legislative policy changes. Therefore, I am vetoing these sections to avoid conflict and confusion.

Section 2 of this bill amends RCW 70.96A.010 which is also amended by section 304 of E2SHB 1793. Section 35 (22) repeals RCW 70.96.150 which is amended by section 308 of E2SHB 1793. In addition, section 14 of this bill provides a new section that is similar to the first paragraph of section 308 of E2SHB 1793 but lacks the new second paragraph. I have signed SHB 1619 first to avoid repealing the amended language in section 308 of E2SHB 1793. Section 26 of this bill amends RCW 70.96A.120 which is also amended by section 306 of E2SHB 1793. Section 27 of this bill amends RCW 70.96A.140 which is also amended by section 307 of E2SHB 1793. Section 28 of this bill amends RCW 70.96A.150 which conflicts with section 1 of SSB 5469 which I have already signed.

With the exception of sections 2, 14, 26, 27, and 28, Engrossed Substitute House Bill No. 1619 is approved."

CHAPTER 271

[Second Substitute House Bill No. 1793]

OMNIBUS ALCOHOL AND CONTROLLED SUBSTANCES ACT

AN ACT Relating to alcohol and controlled substances abuse; amending RCW 9.94A-.310, 69.50.401, 9A.36.050, 9A.82.100, 28A.120.040, 13.40.265, 46.20.265, 66.44.365, 69.41-.065, 69.50.420, 69.52.070, 9.73.090, 9.73.120, 9.73.080, 69.50.505, 5.62.020, 18.83.110, 70.96A.010, 70.96A.020, 70.96A.120, 70.96A.140, 70.96.150, 66.24.210, 66.24.290, 82.08.150, and 82.24.020; reenacting and amending RCW 9.94A.320, 9.94A.360, and 5.60.060; adding new sections to chapter 9.73 RCW; adding a new section to chapter 9A.36 RCW; adding a new section to chapter 9A.82 RCW; adding a new chapter to Title 10 RCW; adding a new section to chapter 13.40 RCW; adding new sections to chapter 28A.67 RCW; adding new sections to chapter 28A.120 RCW; adding a new chapter to Title 35 RCW; adding new sections to chapter 36.27 RCW; adding a new chapter to Title 43 RCW; adding a new section to chapter 44.28 RCW; adding new sections to chapter 66.28 RCW; adding new sections to chapter 69.50 RCW; adding a new section to chapter 70.96A RCW; adding a new chapter to Title 82 RCW; creating new sections; prescribing penalties; making appropriations; providing an expiration date; providing effective dates; and declaring an emergency.

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

INDEX

Part I. Criminal Penalties

- A. Crimes and Penalties
- B. Juvenile Offenders Structured Residential Program
- C. Juvenile Driver's License Revocation

Part II. Prevention, Investigation, and Procedure

- A. One-Party Consent
- B. Monitoring of Inmate Telephone Calls
- C. Property Forfeiture
- D. Off-Limits Orders
- E. Drug Site Cleanup
- F. Keg Registration
- G. Special Narcotics Enforcement Unit
- H. State-wide Drug Prosecution Assistance Program
- I. Neighborhood Blight
- J. School Official Searches of Student Lockers

Part III. Social Programs and Education

- A. Involuntary Treatment
- B. Drug and Alcohol Abuse Prevention and Early Intervention in Schools
- C. Community Mobilization

Part IV. Appropriations

Part V. Revenue Provisions

Part VI. Miscellaneous

**PART I
CRIMINAL PENALTIES
SUBPART A
CRIMES AND PENALTIES**

Sec. 101. Section 2, chapter 115, Laws of 1983 as last amended by section 1, chapter 218, Laws of 1988 and RCW 9.94A.310 are each amended to read as follows:

(1) **TABLE 1**
Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XI	6y 62- 82	6y9m 69- 92	7y6m 77- 102	8y3m 85- 113	9y 93- 123	9y9m 100- 133	12y6m 129- 171	13y6m 139- 185	15y6m 159- 212	17y6m 180- 240
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144

SERIOUSNESS
SCORE

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90 Days	2-	3-	4-	12+-	14-	17-	22-	33-	43-
		6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60 Days	0-90 Days	2-	2-	3-	4-	12+-	14-	17-	22-
			5	6	8	12	14	18	22	29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence 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 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon

as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon 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 times shall be added to the presumptive range determined under subsection (2) of this section:

- (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)
- (b) 18 months for Burglary 1 (RCW 9A.52.020)
- (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of section 112 of this 1989 act.

Sec. 102. Section 2, chapter 62, Laws of 1988, section 12, chapter 145, Laws of 1988, section 2, chapter 218, Laws of 1988 and RCW 9.94A.320 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.011)
X	Kidnapping 1 (RCW 9A.40.020) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (and 3 years junior) (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Endangering life and property by explosives with threat to human being (RCW 70.74.270)

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

- VIII Arson 1 (RCW 9A.48.020)
 Rape 2 (RCW 9A.44.050)
 Rape of a Child 2 (RCW 9A.44.076)
 Child Molestation 1 (RCW 9A.44.083)
 Promoting Prostitution 1 (RCW 9A.88.070)
 Selling heroin for profit (RCW 69.50.410)
Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- VII Burglary 1 (RCW 9A.52.020)
 Vehicular Homicide (RCW 46.61.520)
 Introducing Contraband 1 (RCW 9A.76.140)
 Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))
 Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- VI Bribery (RCW 9A.68.010)
 Manslaughter 2 (RCW 9A.32.070)
 Child Molestation 2 (RCW 9A.44.086)
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b))
 Incest 1 (RCW 9A.64.020(1))
 Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
 Manufacture, deliver, or possess with intent to deliver ((heroin or)) narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
 Intimidating a Judge (RCW 9A.72.160)

- V Criminal Mistreatment 1 (RCW 9A.42.020)
 - Rape 3 (RCW 9A.44.060)
 - Kidnapping 2 (RCW 9A.40.030)
 - Extortion 1 (RCW 9A.56.120)
 - Incest 2 (RCW 9A.64.020(2))
 - Perjury 1 (RCW 9A.72.020)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Theft of Livestock 1 (RCW 9A.56.080)
 - Robbery 2 (RCW 9A.56.210)
 - Assault 2 (RCW 9A.36.021)
 - Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Rape of a Child 3 (RCW 9A.44.079)
 - Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
 - Hit and Run — Injury Accident (RCW 46.52.020(4))
 - Vehicular Assault (RCW 46.61.522)
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I–V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
 - Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 - Child Molestation 3 (RCW 9A.44.089)
 - Extortion 2 (RCW 9A.56.130)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.031)
 - Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)

- Willful Failure to Return from Work Release (RCW 72.65.070)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 1 (RCW 9A.56.080)
- II Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Burglary 2 (RCW 9A.52.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Reckless Endangerment 1 (RCW 9A.36.— (section 109 of this 1989 act))
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

Sec. 103. Section 7, chapter 115, Laws of 1983 as last amended by section 12, chapter 153, Laws of 1988 and by section 3, chapter 157, Laws of 1988 and RCW 9.94A.360 are each reenacted and amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (4) of this section, class A prior felony convictions shall always be included in the offender score. Class B prior felony convictions shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without being convicted of any felonies. Class C prior felony convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) Include class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(6) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score; and

(c) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(8) If the present conviction is for a nonviolent offense and not covered by subsection (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(9) If the present conviction is for a violent offense and not covered in subsection (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(11) If the present conviction is for Burglary 1, count prior convictions as in subsection (9) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 conviction.

(12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or

Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction.

(13) If the present conviction is for a drug offense count ~~((two))~~ three points for each adult prior felony drug offense conviction and ~~((one))~~ two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (9) of this section if the current drug offense is violent, or as in subsection (8) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, or Willful Failure to Return from Work Release, RCW 72.65.070, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2, count priors as in subsection (8) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 conviction, and one point for each juvenile prior Burglary 2 conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

Sec. 104. Section 69.50.401, chapter 308, Laws of 1971 ex. sess. as last amended by section 4, chapter 458, Laws of 1987 and RCW 69.50.401 are each amended to read as follows:

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69-.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

NEW SECTION. Sec. 105. A new section is added to chapter 69.50 RCW to read as follows:

A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

NEW SECTION. Sec. 106. A new section is added to chapter 69.50 RCW to read as follows:

(1) Every person convicted of a felony violation of RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

***NEW SECTION.** Sec. 107. A new section is added to chapter 69.50 RCW to read as follows:

It is unlawful for any person to deliver, or possess with intent to deliver, hypodermic syringes, needles, or other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body, knowing or under circumstances where the person reasonably should know that such syringes, needles, or other objects will be used or are intended to be used to unlawfully introduce a controlled substance into the human body. Any person who violates this section is guilty of a misdemeanor. The department of social and health services shall conduct a study of needle exchange programs that are operating in other states and countries. The study shall examine the documented effectiveness of such programs, the estimated

number of drug addicts participating in such programs, the estimated number of drug addicts who have participated in a testing, counseling, and education program as a result of the needle exchange program, the extent to which participation in a drug treatment program is a voluntary or mandated component of the needle exchange programs, the number of participants who have tested HIV positive, who administers such needle exchange programs, and the costs to administer and operate the program. The department of social and health services shall report back to the legislature by December 1, 1989.

*Sec. 107 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 108. The legislature finds that increased trafficking in illegal drugs has increased the likelihood of "drive-by shootings." It is the intent of the legislature in sections 102, 109, and 110 of this act to categorize such reckless and criminal activity into a separate crime and to provide for an appropriate punishment.

NEW SECTION. Sec. 109. A new section is added to chapter 9A.36 RCW to read as follows:

(1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class C felony.

Sec. 110. Section 9A.36.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.36.050 are each amended to read as follows:

(1) A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct not amounting to reckless endangerment in the first degree but which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment in the second degree is a gross misdemeanor.

Sec. 111. Section 10, chapter 270, Laws of 1984 as amended by section 11, chapter 455, Laws of 1985 and RCW 9A.82.100 are each amended to read as follows:

(1) (a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity or by a violation of RCW 9A.82.060 or 9A.82.080

may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080 or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled,

conducted, or participated in the conduct of, in violation of RCW 9A.82-.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1) (a) and (b)(i) of this section, either party has the right to a jury trial.

NEW SECTION. Sec. 112. A new section is added to chapter 69.50 RCW to read as follows:

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection to a person in a school or on a school bus or within one thousand feet of a school bus route stop designated by the school district or within one thousand feet of the perimeter of the school grounds is punishable by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of

eighteen were not present in the school, the school bus, or at the school bus route stop at the time of the offense or that school was not in session.

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

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, or county engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school or school bus route stop, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, or county has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school or school bus route stop. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, or county if the map or diagram is otherwise admissible under court rule.

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

(1) "School" has the meaning under RCW 28A.01.055 or 28A.01.060. The term "school" also includes a private school approved under RCW 28A.02.201;

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

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

Sec. 113. Section 210, chapter 518, Laws of 1987 and RCW 28A.120-.040 are each amended to read as follows:

The superintendent of public instruction, through the state clearing-house for education information, shall collect and disseminate to all school districts and other interested parties information about effective substance abuse programs and the penalties for manufacturing, selling, delivering, or possessing controlled substances on or within one thousand feet of a school or school bus route stop under section 112 of this 1989 act and distributing a controlled substance to a person under the age of eighteen under RCW 69.50.406.

NEW SECTION. Sec. 114. Sections 101 through 111 of this act apply to crimes committed on or after July 1, 1989.

**SUBPART B
JUVENILE OFFENDERS STRUCTURED RESIDENTIAL
PROGRAM**

NEW SECTION. Sec. 115. A new section is added to chapter 13.40 RCW to read as follows:

(1) It is the intent of the legislature to establish a program that will benefit both the community and juvenile offenders by promoting the offenders' personal development and self-discipline, thereby making them more effective participants in society.

(2) Within available funds, the department of social and health services shall develop a juvenile offenders structured residential program for selected juvenile offenders. The program shall provide intensive training and rehabilitative programs for juvenile offenders. The department shall adopt rules for the operation, access, and successful completion of such programs.

(3) In order to serve significant portions of the sixty percent of juvenile justice clients in need of treatment for substance abuse, the department of social and health services shall, within available funds, provide enhancements to the eighteen county detention facilities in the state. The enhancement shall be used to develop an intensive, inpatient treatment component within the structure of county detention programs, to be modeled after the exodus program currently operated by the department's division of juvenile rehabilitation.

(4) In order to serve youth returning from institutional treatment programs who seek help for substance abuse, the department of social and health services shall, within available funds, enhance substance abuse services and coordination for each of six service regions to ensure effective use of existing and new services created by this act, including direct service and consultation.

(5) No juvenile who suffers from any mental or physical problem which could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the program.

(6) The department shall complete a study of the effectiveness of programs of the type created in this section by December 31, 1992.

(7) This section shall expire on July 1, 1993.

SUBPART C

JUVENILE DRIVER'S LICENSE REVOCATION

Sec. 116. Section 2, chapter 148, Laws of 1988 and RCW 13.40.265 are each amended to read as follows:

(1) (a) If a juvenile (~~((under eighteen years of age, but))~~) thirteen years of age or (~~((over;))~~) older is found by juvenile court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, (~~((a court;))~~) upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) (~~((The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first order issued with respect to the juvenile under RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such order issued with respect to the juvenile))~~) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2) (a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement.

Sec. 117. Section 7, chapter 148, Laws of 1988 and RCW 46.20.265 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 13.40.265, 66.44.365, 69.41.065, 69.50.420, or 69.52.070 or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for ~~((one))~~ two years or until the juvenile reaches eighteen years of age, whichever is longer.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection. ~~((The department shall not reinstate driving privileges earlier than ninety days after the date the juvenile entered into a diversion agreement for the first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW and not earlier than one year after the date the juvenile entered into a diversion agreement for a second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW:))~~

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

Sec. 118. Section 3, chapter 148, Laws of 1988 and RCW 66.44.365 are each amended to read as follows:

(1) If a juvenile (~~(under eighteen years of age, but thirteen or over,))~~ thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, (~~(the court,))~~ upon petition of a juvenile (~~(who has been found by the court to have committed an offense that is a violation of this chapter,))~~ whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) (~~(The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such revocation issued with respect to the juvenile))~~ If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 119. Section 4, chapter 148, Laws of 1988 and RCW 69.41.065 are each amended to read as follows:

(1) If a juvenile (~~(under eighteen years of age, but thirteen or over,))~~ thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, (~~(the court,))~~ upon petition of a juvenile (~~(who has been found by the court to have committed an offense that is a violation of this chapter,))~~ whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) (~~(The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such revocation issued~~

with respect to the juvenile)) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 120. Section 5, chapter 148, Laws of 1988 and RCW 69.50.420 are each amended to read as follows:

(1) ~~If a juvenile ((under eighteen years of age, but thirteen or over,)) thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.~~

(2) ~~Except as otherwise provided in subsection (3) of this section, ((the court,)) upon petition of a juvenile ((who has been found by the court to have committed an offense that is a violation of this chapter,)) whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.~~

(3) ~~((The court shall not notify the department that the juvenile's privilege to drive should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation issued with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the entry of the judgment if it is the second or subsequent such revocation issued with respect to the juvenile))~~ If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 121. Section 6, chapter 148, Laws of 1988 and RCW 69.52.070 are each amended to read as follows:

(1) ~~If a juvenile ((under eighteen years of age, but thirteen or over,)) thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the~~

court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, ~~((the court;))~~ upon petition of a juvenile ~~((who has been found by the court to have committed an offense that is a violation of this chapter;))~~ whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) ~~((The court shall not notify the department that the juvenile's privilege to drive should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation issued with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the entry of the judgment if it is the second or subsequent such revocation issued with respect to the juvenile))~~ If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

PART II
PREVENTION, INVESTIGATION, AND PROCEDURE
SUBPART A
ONE-PARTY CONSENT

NEW SECTION. Sec. 201. A new section is added to chapter 9.73 RCW to read as follows:

The legislature finds that the unlawful manufacturing, selling, and distributing of controlled substances is becoming increasingly prevalent and violent. Attempts by law enforcement officers to prevent the manufacture, sale, and distribution of drugs is resulting in numerous life-threatening situations since drug dealers are using sophisticated weapons and modern technological devices to deter the efforts of law enforcement officials to enforce the controlled substance statutes. Dealers of unlawful drugs are employing a wide variety of violent methods to realize the enormous profits of the drug trade.

Therefore, the legislature finds that conversations regarding illegal drug operations should be intercepted, transmitted, and recorded in certain circumstances without prior judicial approval in order to protect the life and safety of law enforcement personnel and to enhance prosecution of drug

offenses, and that that interception and transmission can be done without violating the constitutional guarantees of privacy.

NEW SECTION. Sec. 202. A new section is added to chapter 9.73 RCW to read as follows:

(1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4) (b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation.

NEW SECTION. Sec. 203. A new section is added to chapter 9.73 RCW to read as follows:

In each superior court judicial district in class AA and A counties there shall be available twenty-four hours a day at least one superior court or district court judge or magistrate designated to receive telephonic requests for authorizations that may be issued pursuant to this chapter. The presiding judge of each such superior court in conjunction with the district court judges in that superior court judicial district shall establish a coordinated schedule of rotation for all of the superior and district court judges and magistrates in the superior court judicial district for purposes of ensuring the availability of at least one judge or magistrate at all times. During the period that each judge or magistrate is designated, he or she shall be equipped with an electronic paging device when not present at his or her usual telephone. It shall be the designated judge's or magistrate's responsibility to ensure that all attempts to reach him or her for purposes of requesting authorization pursuant to this chapter are forwarded to the electronic page number when the judge or magistrate leaves the place where he or she would normally receive such calls.

NEW SECTION. Sec. 204. A new section is added to chapter 9.73 RCW to read as follows:

(1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization, but not of the evidence, and shall make a determination whether the requirements of subsection (1) of this section were met. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the office of the administrator for the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section.

Sec. 205. Section 1, chapter 48, Laws of 1970 ex. sess. as last amended by section 2, chapter 38, Laws of 1986 and RCW 9.73.090 are each amended to read as follows:

(1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may (~~upon application of the officer who secured the original authorization~~) renew or continue the authorization for ~~((an))~~ additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting

party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days.

NEW SECTION. Sec. 206. A new section is added to chapter 9.73 RCW to read as follows:

(1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate violations of sections 201 through 204 of this act or RCW 9.73.090 and initiate and conduct prosecutions of any violations upon request of any of the following:

(a) The person who was the nonconsenting party to the intercepted, transmitted, or recorded conversation or communication; or

(b) The county prosecuting attorney of the jurisdiction in which the offense has occurred.

(2) The request shall be communicated in writing to the attorney general.

Sec. 207. Section 5, chapter 363, Laws of 1977 ex. sess. and RCW 9.73.120 are each amended to read as follows:

(1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

(a) An authorization, extension or renewal was applied for;

(b) The kind of authorization applied for;

(c) The authorization was granted as applied for, was modified, or was denied;

(d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;

(e) The offense specified in the authorization or extension or renewal of authorization;

(f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; ((and))

(g) Whether an arrest resulted from the communication which was the subject of the authorization; and

(h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights.

NEW SECTION. Sec. 208. A new section is added to chapter 9.73 RCW to read as follows:

The administrator for the courts shall not later than January 2, 1991, report to the house of representatives judiciary committee and the senate law and justice committee on the number of authorizations made under sections 202 and 204 of this act and RCW 9.73.090, categorized according to whether the authorization was judicial or nonjudicial. The report shall also show the number of authorizations denied, the number of arrests resulting from the authorizations, the offenses charged, and the number of convictions resulting from the arrests. The administrator for the courts shall use the reports submitted pursuant to sections 202 and 204 of this act and RCW 9.73.090 together with inquiries to the appropriate law enforcement agencies and courts to prepare the report.

Sec. 209. Section 6, chapter 93, Laws of 1967 ex. sess. and RCW 9.73.080 are each amended to read as follows:

Except as otherwise provided in this chapter, any person who ((shall)) violates RCW 9.73.030 ((shall be)) is guilty of a gross misdemeanor.

SUBPART B

MONITORING OF INMATE TELEPHONE CALLS

NEW SECTION. Sec. 210. A new section is added to chapter 9.73 RCW to read as follows:

(1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility as provided for by this section:

(a) Before the implementation of this section, all inmates or residents of a state correctional facility shall be notified in writing that, as of the effective date of this section, their telephone conversations may be intercepted, recorded, and/or divulged.

(b) Unless otherwise provided for in this section, after intercepting or recording a telephone conversation, only the superintendent and his or her designee shall have access to that recording.

(c) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(d) All telephone conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department shall develop policies and procedures to implement this section.

SUBPART C PROPERTY FORFEITURE

NEW SECTION. Sec. 211. The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a

result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest.

Sec. 212. Section 15, chapter 2, Laws of 1983 as last amended by section 2, chapter 282, Laws of 1988 and RCW 69.50.505 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, ((or)) acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale of property described in paragraphs (1) or (2), ((but)) except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without ((his)) the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia; ((and))

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property,

proceeds, or assets acquired in whole or in part with proceeds traceable to ((such)) an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission: PROVIDED FURTHER, That no personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property: PROVIDED, That:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at

the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) ((σ)), (a)(7), or (a)(8) of this section within forty-five

days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4) ((or)), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The court to which the matter is to be removed shall be the district court when such aggregate value is ten thousand dollars or less of personal property. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of ((items specified in subsection (a)(4) or (a)(7) of this section)) the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4) ((or)), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) (i) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under

this title shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after the payment of all expenses shall be distributed as follows:

(A) ~~((Seventy-five))~~ Twenty-five percent of the money derived from the forfeiture of real property and seventy-five percent of the money derived from the forfeiture of personal property shall be deposited in the general fund of the state, county, and/or city of the seizing law enforcement agency and shall be used exclusively for the expansion or improvement of law enforcement services. These services may include the creation of reward funds for the purpose of rewarding informants who supply information leading to the arrest, prosecution and conviction of persons who violate laws relating to controlled substances. Such moneys shall not supplant preexisting funding sources; ~~((and))~~

(B) Twenty-five percent of money derived from the forfeiture of real property and twenty-five percent of money derived from the forfeiture of personal property shall be remitted to the state treasurer for deposit in the public safety and education account established in RCW 43.08.250;

(C) Until July 1, 1995, fifty percent of money derived from the forfeiture of real property shall be remitted to the state treasurer for deposit in the drug enforcement and education account under section 401 of this 1989 act, on and after July 1, 1995, the fifty percent of the money shall be remitted in the same manner as the twenty-five percent of the money remitted under (2)(i)(A) of this subsection; and

(D) If an investigation involves a seizure of moneys and proceeds having an aggregate value of less than five thousand dollars, the moneys and proceeds may be deposited in total in the general fund of the governmental unit of the seizing law enforcement agency and shall be appropriated exclusively for the expansion of narcotics enforcement services. Such moneys shall not supplant preexisting funding sources.

(ii) Money deposited according to this section must be deposited within ninety days of the date of final disposition of either the administrative seizure or the judicial seizure;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are

seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(i) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

SUBPART D OFF-LIMITS ORDERS

NEW SECTION. Sec. 213. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem.

NEW SECTION. Sec. 214. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of

this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries.

NEW SECTION. Sec. 215. A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

- (1) In a civil action, including an action brought under this chapter;
- (2) In a nuisance abatement action pursuant to chapter 7.43 RCW;
- (3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;

(4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or

(5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision.

NEW SECTION. Sec. 216. Upon the filing of an application for an off-limits order under section 215 (1), (2), or (3) of this act, the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date.

NEW SECTION. Sec. 217. Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter.

NEW SECTION. Sec. 218. In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under section 215 (1), (2), or (3) of this act. The court in its discretion may allow a respondent, who is the subject of any order issued under section 214 of this act as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court.

NEW SECTION. Sec. 219. A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

NEW SECTION. Sec. 220. Nothing in this chapter shall preclude a party from appearing in person or by counsel.

NEW SECTION. Sec. 221. A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on

or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

NEW SECTION. Sec. 222. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under chapter 7.20 RCW.

NEW SECTION. Sec. 223. (1) Any person who willfully disobeys an off-limits order issued under this chapter shall be guilty of a gross misdemeanor.

(2) Any person who willfully disobeys an off-limits order in violation of the terms of the order and who also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony.

NEW SECTION. Sec. 224. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter.

NEW SECTION. Sec. 225. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred.

NEW SECTION. Sec. 226. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

NEW SECTION. Sec. 227. Sections 213 through 226 of this act shall constitute a new chapter in Title 10 RCW.

SUBPART E DRUG SITE CLEANUP

NEW SECTION. Sec. 228. A new section is added to chapter 69.50 RCW to read as follows:

Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in section 2(5), chapter 2, Laws of 1989 (Initiative Measure No. 97), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances,

except for those random and representative samples obtained for evidentiary purposes. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section.

SUBPART F KEG REGISTRATION

NEW SECTION. Sec. 229. Only licensees holding a class A or B license in combination with a class E license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in section 231 of this act;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under section 231 of this act to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

NEW SECTION. Sec. 230. Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

- (1) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in section 231 of this act;
- (2) Provide one piece of identification pursuant to RCW 66.16.040;
- (3) Be of legal age to purchase, possess, or use malt liquor;
- (4) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;
- (5) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;
- (6) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and
- (7) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

NEW SECTION. Sec. 231. The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a state-wide basis or on the basis of smaller geographical areas.

The board shall develop and make available forms for the declaration and receipt required by section 229 of this act.

It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

NEW SECTION. Sec. 232. (1) Except as provided in subsection (2) of this section, the violation of any provisions of sections 229 through 231 of this act is punishable by a fine of not more than five hundred dollars.

(2) Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a minor is liable, on conviction, for a first offense for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense for a penalty of not more than five hundred dollars or imprisonment for not more than six months, or both; and for a third or subsequent offense for a penalty of not more than five hundred dollars or imprisonment for more than one year, or both.

NEW SECTION. Sec. 233. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to

keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

NEW SECTION. Sec. 234. Sections 229 through 233 of this act are each added to chapter 66.28 RCW.

SUBPART G SPECIAL NARCOTICS ENFORCEMENT UNIT

NEW SECTION. Sec. 235. A new section is added to chapter 9A.82 RCW to read as follows:

A special narcotics enforcement unit is established within the Washington state patrol drug control assistance unit. The unit shall be coordinated between the Washington state patrol, the attorney general, and the Washington association of sheriffs and police chiefs. The initial unit shall consist of attorneys, investigators, and the necessary accountants and support staff. It is the responsibility of the unit to: (1) Conduct criminal narcotic profiteering investigations and assist with prosecutions, (2) train local undercover narcotic agents, and (3) coordinate federal, state, and local interjurisdictional narcotic investigations.

SUBPART H STATE-WIDE DRUG PROSECUTION ASSISTANCE PROGRAM

NEW SECTION. Sec. 236. A new section is added to chapter 36.27 RCW to read as follows:

The legislature recognizes that, due to the magnitude or volume of offenses in a given area of the state, there is a recurring need for supplemental assistance in the prosecuting of drug and drug-related offenses that can be directed to the area of the state with the greatest need for short-term assistance. A state-wide drug prosecution assistance program is created within the department of community development to assist county prosecuting attorneys in the prosecution of drug and drug-related offenses.

NEW SECTION. Sec. 237. A new section is added to chapter 36.27 RCW to read as follows:

There is established a state-wide advisory committee comprised of the attorney general, the chief of the Washington state patrol, both United States attorneys whose offices are located in Washington state, and three county prosecuting attorneys appointed by the Washington association of prosecuting attorneys, who will also act as supervising attorneys. The state-wide advisory committee shall select one of the supervising attorneys to act as project director of the drug prosecution assistance program.

NEW SECTION. Sec. 238. A new section is added to chapter 36.27 RCW to read as follows:

The project director of the drug prosecution assistance program shall employ up to five attorneys to act as special deputy prosecuting attorneys. A county or counties may request the assistance of one or more of the special deputy prosecuting attorneys. The project director after consultation with the advisory committee shall determine the assignment of the special deputy prosecutors. Within funds appropriated for this purpose, the project director may also employ necessary support staff and purchase necessary supplies and equipment.

The advisory committee shall regularly review the assignment of the special deputy prosecuting attorneys to ensure that the program's impact on the drug abuse problem is maximized.

During the time a special deputy prosecuting attorney is assigned to a county, the special deputy is under the direct supervision of the county prosecuting attorney for that county. The advisory committee may reassign a special deputy at any time: PROVIDED, That adequate notice must be given to the county prosecuting attorney if the special deputy is involved in a case scheduled for trial.

SUBPART I NEIGHBORHOOD BLIGHT

NEW SECTION. Sec. 239. Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that has not been lawfully occupied for a period of one year or more, constitutes a threat to the public health, safety, or welfare as determined by the county health department in the applicable county and that is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use.

NEW SECTION. Sec. 240. Counties, cities, and towns may sell, lease, or otherwise transfer real property acquired pursuant to this chapter for residential, recreational, commercial, industrial, or other uses or for public use, subject to such covenants, conditions, and restrictions, including covenants running with the land, as the county, city, or town deems to be necessary or desirable to rehabilitate and preserve the dwelling, building, or

structure in a habitable condition. The purchasers or lessees and their successors and assigns shall be obligated to comply with such other requirements as the county, city, or town may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such property required to make the dwelling, building, or structure habitable. Such real property or interest shall be sold, leased, or otherwise transferred, at not less than its fair market value. In determining the fair market value of real property for uses in accordance with this section, a municipality shall take into account and give consideration to, the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee.

NEW SECTION. Sec. 241. A county, city, or town may dispose of real property acquired pursuant to this section to private persons only under such reasonable, competitive procedures as it shall prescribe. The county, city, or town may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the county, city, or town may execute and deliver contracts, deeds, leases, and other instruments of transfer.

NEW SECTION. Sec. 242. Every county, city, or town may, in addition to any other authority granted by this chapter: (1) Enter upon any building or property found to constitute a blight on the surrounding neighborhood in order to make surveys and appraisals, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; and (2) borrow money, apply for, and accept, advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, a county, or other public body, or from any sources, public or private, for the purposes of this chapter, and enter into and carry out contracts in connection herewith.

NEW SECTION. Sec. 243. Sections 239 through 242 of this act shall constitute a new chapter in Title 35 RCW.

SUBPART J

SCHOOL OFFICIAL SEARCHES OF STUDENT LOCKERS

NEW SECTION. Sec. 244. A new section is added to chapter 28A.67 RCW to read as follows:

The legislature finds that illegal drug activity and weapons in schools threaten the safety and welfare of school children and pose a severe threat to the state educational system. School officials need authority to maintain order and discipline in schools and to protect students from exposure to illegal drugs, weapons, and contraband. Searches of school-issued lockers and the contents of those lockers is a reasonable and necessary tool to protect the interests of the students of the state as a whole.

NEW SECTION. Sec. 245. A new section is added to chapter 28A.67 RCW to read as follows:

No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband as provided in sections 244 through 247 of this act.

NEW SECTION. Sec. 246. A new section is added to chapter 28A.67 RCW to read as follows:

(1) A school principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's designee has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.

(2) Except as provided in subsection (3) of this section, the scope of the search is proper if the search is conducted as follows:

(a) The methods used are reasonably related to the objectives of the search; and

(b) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

(3) A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070.

NEW SECTION. Sec. 247. A new section is added to chapter 28A.67 RCW to read as follows:

(1) In addition to the provisions in section 246 of this act, the school principal, vice principal, or principal's designee may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.

(2) If the school principal, vice principal, or principal's designee, as a result of the search, develops a reasonable suspicion that a certain container or containers in any student locker contain evidence of a student's violation of the law or school rule, the principal, vice principal, or principal's designee may search the container or containers according to the provisions of section 246(2) of this act.

PART III SOCIAL PROGRAMS AND EDUCATION

SUBPART A INVOLUNTARY TREATMENT

Sec. 301. Section 294, page 187, Laws of 1854 as last amended by section 1501, chapter 212, Laws of 1987, section 11, chapter 439, Laws of 1987, and by section 1, chapter ____ (SSB 5034), Laws of 1989 and RCW 5.60.060 are each reenacted and amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

Sec. 302. Section 2, chapter 447, Laws of 1985 as amended by section 1, chapter 212, Laws of 1986 and RCW 5.62.020 are each amended to read as follows:

No registered nurse providing primary care or practicing under protocols, whether or not the physical presence or direct supervision of a physician is required, may be examined in a civil or criminal action as to any information acquired in attending a patient in the registered nurse's professional capacity, if the information was necessary to enable the registered nurse to act in that capacity for the patient, unless:

(1) The patient consents to disclosure or, in the event of death or disability of the patient, his or her personal representative, heir, beneficiary, or devisee consents to disclosure; or

(2) The information relates to the contemplation or execution of a crime in the future, or relates to the neglect or the sexual or physical abuse of a child, or of a vulnerable adult as defined in RCW 74.34.020, or to a person subject to proceedings under chapter 70.96A, 71.05, or 71.34 RCW.

Sec. 303. Section 11, chapter 305, Laws of 1955 as last amended by section 12, chapter 439, Laws of 1987 and RCW 18.83.110 are each amended to read as follows:

Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A-.140 and 71.05.250.

Sec. 304. Section 1, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.010 are each amended to read as follows:

It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts.

Sec. 305. Section 2, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.020 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who ~~((habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted))~~ suffers from the disease of alcoholism, characterized by a physiological dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological and/or psychological withdrawal if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(2) "Drug addict" means a person who uses drugs other than alcohol in a chronic, compulsive, or uncontrollable manner, to the extent that it is seriously interfering with the individual's health, economic, or social functioning. Drug addiction is characterized by a compulsive desire for one or more drugs, loss of control when exposed to one or more drugs, and continued use in spite of adverse consequences;

(3) "Approved treatment facility" means a treatment agency operating under the direction and control of the department of social and health services or providing treatment under this chapter through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3) or meeting the standards prescribed in and approved under RCW 69.54.030;

~~((3))~~ (4) "Secretary" means the secretary of the department of social and health services;

~~((4))~~ (5) "Department" means the department of social and health services;

~~((5) "Director" means the director of the division of alcoholism;)~~

(6) "Emergency service patrol" means a patrol established under RCW 70.96A.170;

(7) "Incapacitated by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to ~~((his))~~ the need for treatment or care and constitutes a danger to himself or herself, to any other person, or to property;

(8) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety;

(9) "Incompetent person" means a person who has been adjudged incompetent by the superior court;

~~((9))~~ (10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other drugs;

~~((10))~~ (11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient and emergency services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, drug addicts, persons incapacitated by alcohol or other drugs, and intoxicated persons;

(12) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(13) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington.

Sec. 306. Section 12, chapter 122, Laws of 1972 ex. sess. as last amended by section 13, chapter 439, Laws of 1987 and RCW 70.96A.120 are each amended to read as follows:

(1) An intoxicated person may come voluntarily to an approved treatment facility for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment facility or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by ~~((the police or the emergency service patrol))~~ a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The ~~((police or the emergency service patrol))~~ peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment facility, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or ~~((member of an emergency patrol))~~ staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the facility for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at ~~((the))~~ an approved treatment facility are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person ~~((incapacitated by alcohol at such facility))~~ for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment facility, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment facility shall ~~((assist))~~ provide him or her ~~((in obtaining shelter))~~ with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible by the treatment facility. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The ~~((police, members of the emergency service))~~ peace officer, staff designated by the county, or treatment facility personnel, who ~~((in good faith))~~ act in compliance with this chapter and are performing in the course of their official duty ~~((and))~~ are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines ~~((it is for the patient's benefit))~~ that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

Sec. 307. Section 14, chapter 122, Laws of 1972 ex. sess. as last amended by section 14, chapter 439, Laws of 1987 and RCW 70.96A.140 are each amended to read as follows:

(1) When the person in charge of a treatment facility, or his or her designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his or her designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. If the person in charge, or his or her designee, finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020. If placement in an alcohol treatment facility is available and

deemed appropriate, the petition shall allege that: The person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for ((the voluntary)) detoxification or treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within ((two)) five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is ((not)) eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than ((three)) two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained ((by the)) in a facility, pursuant to RCW 70.96A.120 or 71.05.210, as now or hereafter amended, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the

court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is an alcoholic must be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is available and able to provide adequate and appropriate treatment for him or her ~~((and the treatment is likely to be beneficial))~~.

(5) A person committed under this section shall remain in the facility for treatment for a period of ~~((thirty))~~ sixty days unless sooner discharged. At the end of the ~~((thirty))~~ sixty-day period, he or she shall be discharged automatically unless the facility, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) ~~((A person recommitted under subsection (5) of this section who has not been discharged by the facility before the end of the ninety day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the facility shall~~

apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

~~((7))~~ ~~((s))~~ ~~((or (6)))~~ Upon the filing of a petition for recommitment under subsection ~~((s))~~ (5) ~~((or (6)))~~ of this section, the court shall fix a date for hearing no less than ~~((three))~~ two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

~~((8))~~ (7) The approved treatment facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

~~((9))~~ (8) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, ~~((that he or she is no longer an alcoholic or))~~ the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

~~((10))~~ (9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the

person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

~~((+1+))~~ (10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

~~((+2+))~~ (11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the facility providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the facility designated to provide the less restrictive treatment is other than the facility providing the initial involuntary treatment, the facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated county alcoholism specialist, and the court of original commitment. The facility designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the facility providing less restrictive care and the designated county alcoholism specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated county alcoholism specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated alcoholism specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive facility. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

Sec. 308. Section 15, chapter 85, Laws of 1959 and RCW 70.96.150 are each amended to read as follows:

The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department.

NEW SECTION. Sec. 309. A new section is added to chapter 70.96A RCW to read as follows:

The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to re-allocate funds in order to ensure that services are available to any eligible person upon demand.

SUBPART B DRUG AND ALCOHOL ABUSE PREVENTION AND EARLY INTERVENTION IN SCHOOLS

NEW SECTION. Sec. 310. (1) The legislature finds that the provision of drug and alcohol counseling and related prevention and intervention services in schools will enhance the classroom environment for students and teachers, and better enable students to realize their academic and personal potentials.

(2) The legislature finds that it is essential that resources be made available to school districts to provide early drug and alcohol prevention and intervention services to students and their families; to assist in referrals to treatment providers; and to strengthen the transition back to school for students who have had problems of drug and alcohol abuse.

(3) New and existing substance abuse awareness programs funded pursuant to RCW 28A.120.030 through 28A.120.050 do not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(4) The legislature intends to provide grants for drug and alcohol abuse prevention and intervention in schools, targeted to those schools with the highest concentrations of students at risk.

NEW SECTION. Sec. 311. (1) Grants provided under section 312 of this act may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has

been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

- (a) Individual and family counseling, including preventive counseling;
- (b) Assessment and referral for treatment;
- (c) Referral to peer support groups;
- (d) Aftercare;
- (e) Development and supervision of student mentor programs;
- (f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and
- (g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and aftercare specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under state board of education rules adopted pursuant to RCW 28A.04.120;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A counselor, social worker, or other qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW; or

(e) A children's mental health specialist as defined in RCW 71.34.020.

NEW SECTION. Sec. 312. (1) The superintendent of public instruction shall select school districts and cooperatives of school districts to receive grants for drug and alcohol abuse prevention and intervention programs for students in kindergarten through twelfth grade, from funds appropriated by the legislature for this purpose. The minimum annual grant amount per district or cooperative of districts shall be twenty thousand dollars. Factors to be used in selecting proposals for funding and in determining grant awards shall be developed in consultation with the substance

abuse advisory committee appointed under RCW 28A.120.038, with the intent of targeting funding to districts with high-risk populations. These factors may include:

(a) Characteristics of the school attendance areas to be served, such as the number of students from low-income families, truancy rates, juvenile justice referrals, and social services caseloads;

(b) The total number of students who would have access to services; and

(c) Participation of community groups and law enforcement agencies in drug and alcohol abuse prevention and intervention activities.

(2) The application procedures for grants under this section shall be consistent with the application procedures for other grants for substance abuse awareness programs under RCW 28A.120.032, including provisions for comprehensive planning, establishment of a school and community substance abuse advisory committee, and documentation of the district's needs assessment. Planning and application for grants under this section may be integrated with the development of other substance abuse awareness programs by school districts, and other grants under RCW 28A.120.030 through 28A.120.036 shall not require a separate application. School districts shall, to the maximum extent feasible, coordinate the use of grants provided under this section with other funding available for substance abuse awareness programs. School districts should allocate resources giving emphasis to drug and alcohol abuse intervention services for students in grades five through nine. Grants may be used to provide services for students who are enrolled in approved private schools.

(3) School districts receiving grants under this section shall be required to establish a means of accessing formal assessment services for determining treatment needs of students with drug and alcohol problems. The grant applications submitted by districts shall identify the districts' plan for meeting this requirement.

(4) School districts receiving grants under this section shall be required to perform biennial evaluations of their drug and alcohol abuse prevention and intervention programs, and to report on the results of these evaluations to the superintendent of public instruction.

(5) The superintendent of public instruction may adopt rules to implement sections 311 through 313 of this act.

NEW SECTION. Sec. 313. (1) School districts are encouraged to promote parent and community involvement in drug and alcohol abuse prevention and intervention programs, through parent visits under RCW 28A.58.053 and through any school involvement program established by the district under RCW 28A.58.640 through 28A.58.648.

(2) Districts are further encouraged to review drug and alcohol prevention and intervention programs as part of the self-study procedures required under RCW 28A.58.085 and as part of any annual goal-setting process the district may have established under RCW 28A.58.094.

NEW SECTION. Sec. 314. Sections 311 through 313 of this act are each added to chapter 28A.120 RCW.

SUBPART C COMMUNITY MOBILIZATION

NEW SECTION. Sec. 315. The legislature recognizes that state-wide efforts aimed at reducing the incidence of substance abuse must be increased. The legislature further recognizes that the most effective strategy for reducing the impact of alcohol and other drug abuse is through the collaborative efforts of educators, law enforcement, local government officials, local treatment providers, and concerned community and citizens' groups.

The legislature intends to support the development and activities of community mobilization strategies against substance abuse through the following efforts:

- (1) Provide funding support for prevention, treatment, and enforcement activities identified by communities that have brought together education, treatment, local government, law enforcement, and other key elements of the community;
- (2) Provide technical assistance and support to help communities develop and carry out effective activities; and
- (3) Provide communities with opportunities to share suggestions for state program operations and budget priorities.

NEW SECTION. Sec. 316. There is established in the office of the governor a grant program to provide incentive for and support for communities to develop targeted and coordinated strategies to reduce the incidence and impact of substance abuse.

Activities which may be funded through this grant program include those which:

- (1) Prevent substance abuse through educational and self-esteem efforts, development of positive alternatives, intervention with high-risk groups, and other prevention strategies;
- (2) Support effective treatment by increasing access to and availability of treatment opportunities, particularly for underserved or highly impacted populations, developing aftercare and support mechanisms, and other strategies to increase the availability and effectiveness of treatment;
- (3) Provide meaningful consequences for participation in illegal activity and promote safe and healthy communities through support of law enforcement strategies;
- (4) Create or build on efforts by existing community programs, coordinate their efforts, and develop cooperative efforts or other initiatives to

make most effective use of resources to carry out the community's strategy against substance abuse; and

(5) Other activities which demonstrate both feasibility and a rationale for how the activity will achieve measurable results in the strategy against substance abuse.

NEW SECTION. Sec. 317. Applications for funding under this chapter must:

(1) Demonstrate that the community has developed and is committed to carrying out a coordinated strategy of prevention, treatment, and law enforcement activities; and

(2) Contain evidence of active participation of the community and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, tribal government, and treatment entities in the community, and the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, or other community efforts provide direct, ongoing contact with substance abusers.

NEW SECTION. Sec. 318. This grant program will be available to communities of any geographic size but will encourage and reward communities which develop coordinated or complimentary strategies within geographic areas such as county areas or groups of county areas which correspond to units of government with significant responsibilities in the area of substance abuse, existing coalitions, or other entities important to the success of a community's strategy against substance abuse.

NEW SECTION. Sec. 319. At a minimum, grant applications must include the following:

(1) Definition of geographic area;

(2) A description of the extent and impact of substance abuse in the community, including an explanation of those who are most severely impacted and those most at risk of substance abuse;

(3) An explanation of the community-wide strategy for prevention, treatment, and law enforcement activities related to substance abuse with particular attention to those who are most severely impacted and those most at risk of substance abuse;

(4) Explanation of who was involved in development of the strategy and what specific commitments have been made to carrying it out;

(5) Identification of existing prevention, treatment, and law enforcement resources committed by the community, including financial and other support, and an explanation of how the community's strategy involves and builds on the efforts of existing organizations or coalitions that have been carrying out community efforts against substance abuse;

(6) Identification of activities that address specific objectives in the strategy for which additional resources are needed;

(7) Identification of additional local resources, including public or private funds, donated goods or services, and other measurable commitments, that have been committed to the activities identified in subsection (6) of this section;

(8) Identification of activities which address specific objectives in the strategy for which funding is requested. Activities should be presented in priority order;

(9) Each activity for which funding is requested must be explained in sufficient detail to demonstrate:

(a) Feasibility through deliberative design, specific objectives, and realistic plan for implementation;

(b) A rationale for how this activity will achieve measurable results and how it will be evaluated;

(c) That funds requested are necessary and appropriate to effectively carry out the activity; and

(10) Identification of a fiscal agent meeting state requirements for each activity proposed for funding.

NEW SECTION. Sec. 320. The governor shall make awards, subject to funds appropriated by the legislature, under the following terms:

(1) In order to be eligible for consideration, applications must demonstrate, at a minimum:

(a) That proposals submitted for funding are based on and address specific objectives contained in a coordinated strategy of prevention, treatment, and law enforcement against substance abuse;

(b) Evidence of active participation in preparation of the proposal and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, tribal government, and treatment entities in the community, and the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, or other community efforts provide direct, ongoing contact with substance abusers, or those at risk for substance abuse;

(c) That they have met the requirements listed in section 319 of this act;

(d) Evidence of additional local resources committed to its strategy totaling at least twenty-five percent of funds awarded under this section. These resources may consist of public or private funds, donated goods or services, and other measurable commitments, including in-kind contributions such as volunteer services, materials, supplies, physical facilities or a combination thereof; and

(e) That the funds applied for, if received, will not be used to replace funding for existing activities.

(2) In order to encourage and reward communities which develop coordinated or complementary strategies within geographic areas which correspond to units of government with significant responsibilities in the area of substance abuse, up to fifty percent of funds appropriated for the purposes of this chapter may be awarded on a per capita basis to eligible applications reflecting coordinated strategy from a county area or group of county areas. The governor may establish minimum allotments per eligible county areas up to fifteen thousand dollars; and

(3) No less than fifty percent of funds appropriated under this chapter shall be awarded on a competitive basis for activities by communities not participating in a county-wide strategy and activities identified by county-wide strategies but not funded through per capita grants. Eligible applications will be assessed and compared by a peer review committee whose members have experience in prevention, treatment, law enforcement, and other community efforts against substance abuse using the following criteria:

(a) The extent and impact of substance abuse;

(b) The extent to which key elements of the community are involved in and committed to the coordinated strategy;

(c) The extent of commitments of local resources to the coordinated strategy;

(d) The extent to which any activities in a community's strategy offer an innovative approach to a chronic, wide-spread problem.

The peer review committee will advise the governor on the extent to which each eligible applicant has met these criteria. The governor will distribute available funds based on this information.

(4) The governor shall distribute fifty percent of the initial appropriation for the purposes of this chapter no later than October 1, 1989, and the remainder no later than July 1, 1990.

(5) Activities funded under this section may be considered for funding in future years, but will be considered under the same terms and criteria of new activities. Funding under this section shall not constitute an obligation by the state of Washington to provide ongoing funding.

NEW SECTION. Sec. 321. The governor shall ask communities for suggestions on state practices, policies, and priorities that would help communities implement their strategies against substance abuse. The governor or appropriate agency officials shall review and respond to those suggestions making necessary changes where feasible, making recommendations to the legislature where appropriate, and providing an explanation as to why suggested changes cannot be accomplished, if the suggestions cannot be acted upon.

NEW SECTION. Sec. 322. The governor may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of sections 315 through 322 of this act and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. Sec. 323. Sections 315 through 322 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 324. The governor shall report to the legislature by January 1, 1991, regarding the operations of the grant program authorized in section 316 of this act. At a minimum, the report shall include the following:

- (1) Number of grants awarded and the amount of each grant;
- (2) Recipients of grants, including the communities in which they are based;
- (3) Purposes for which the grants were awarded;
- (4) Success of the projects in achieving their stated goals and objectives;
- (5) An assessment of the effect that the activities of this act had on encouraging and supporting coordinated community action against substance abuse;
- (6) Recommendations for further funding by the state; and
- (7) Recommendations regarding future operations of the program, including criteria for awarding grants.

PART IV APPROPRIATIONS

NEW SECTION. Sec. 401. DRUG ENFORCEMENT AND EDUCATION ACCOUNT. The drug enforcement and education account is created in the state treasury. All designated receipts from RCW 66.24.210(4), 66.24.290(3), 69.50.505(f)(2)(i)(C), 82.08.150(5), 82.24.020(2), and sections 420 and 506 of this act shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under this act.

NEW SECTION. Sec. 402. CRIMES AND PENALTIES. The sum of twenty-one million three hundred five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections. Of this amount, eight million eight hundred thousand dollars is for operational costs associated with the additional prison population due to the new crimes and increased penalties established by sections 101 through 112 of this act. The remaining twelve million five hundred five thousand dollars is for the purpose of renovating or constructing additional facilities needed as a result of the new crimes and penalties.

NEW SECTION. Sec. 403. JUVENILE OFFENDERS STRUCTURED RESIDENTIAL PROGRAM. The sum of one million eight hundred thirty-five thousand dollars, or as much thereof as may be necessary, is appropriated from the drug enforcement and education account to the department of social and health services for the biennium ending June 30, 1991, for the juvenile offenders structured residential program.

NEW SECTION. Sec. 404. MONITORING INMATE TELEPHONE CALLS. The sum of one hundred seventy-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections for the purpose of monitoring inmate telephone calls within state correctional facilities.

NEW SECTION. Sec. 405. SPECIAL NARCOTICS ENFORCEMENT UNIT. The sum of nine hundred forty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the Washington state patrol to be used solely for purposes of establishing the special narcotics enforcement unit within the state patrol drug control assistance unit.

NEW SECTION. Sec. 406. STATE-WIDE DRUG PROSECUTION ASSISTANCE UNIT. The sum of five hundred sixty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of community development for the state-wide drug prosecution assistance unit. None of this sum may be used by the department of community development for administrative expenses.

NEW SECTION. Sec. 407. INVOLUNTARY TREATMENT. The sum of four million nine hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for the purposes of sections 301 through 309 of this act.

NEW SECTION. Sec. 408. PREVENTION AND EARLY INTERVENTION IN SCHOOLS. The sum of ten million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the superintendent of public instruction to support school district substance abuse awareness programs provided under sections 310 through 313 of this act.

It is the intent of the legislature that one-time grants provided to school districts from appropriations under this section do not meet the criteria for levy reduction funds under RCW 84.52.0531 and shall not be deemed to be levy reduction funds.

NEW SECTION. Sec. 409. **ALCOHOL AND DRUG-ABUSING PREGNANT WOMEN.** The sum of five million five hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for maternity care support services for alcohol and drug-abusing pregnant women. Support services shall include substance abuse treatment programs specifically designed to serve pregnant women and postpartum women and their infants and children. A continuum of treatment shall be provided, to include one or more of the following components:

(1) Inpatient treatment programs capable of serving pregnant women and postpartum women and infants;

(2) An ambulatory treatment facility serving women and their infants who test positive for the human immunodeficiency virus (HIV) or the acquired immunodeficiency syndrome (AIDS);

(3) Transition housing or safe living space for pregnant and postpartum women and infants;

(4) Outpatient or follow-up treatment which includes a provision for child care.

The department shall maximize federal participation for support services provided under this section to eligible persons under the medical assistance program, Title XIX of the federal social security act.

NEW SECTION. Sec. 410. **COMMUNITY MOBILIZATION.** The sum of three million six hundred forty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of community development for the purposes of funding community mobilization strategies. Of this amount, forty thousand dollars is to provide technical assistance to communities in meeting the conditions of grant applications.

NEW SECTION. Sec. 411. **SECURITY IN SCHOOLS.** The sum of three million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the superintendent of public instruction for matching grants to enhance security in secondary schools. School districts which apply for such grants shall ensure that no more than seventy-five percent of the district's total expenditures for school security in any school year are supported by the grant amounts. The grants shall be expended solely for the costs of employing or contracting for building security monitors in secondary schools during school hours and school events. Of the amount appropriated in this section, a minimum of two million seven hundred fifty thousand dollars is provided for grants to districts that, during the 1988-89 school year, employed or contracted for security monitors in schools during school hours.

It is the intent of the legislature that grants provided to school districts from appropriations under this section do not meet the criteria for levy reduction funds under RCW 84.52.0531 and shall not be deemed to be levy reduction funds.

NEW SECTION. Sec. 412. CRIME LAB ENHANCEMENT. The sum of eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the Washington state patrol to be used solely for purposes of enhancing and expediting identification and analysis in drug cases.

NEW SECTION. Sec. 413. JUVENILE REHABILITATION—SUBSTANCE ABUSE. The sum of six hundred twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services to be used solely for the purposes of enhancing detection and treatment of the use of illegal drugs in the juvenile rehabilitation institutions.

NEW SECTION. Sec. 414. YOUTH ASSESSMENT AND TREATMENT. The sum of twelve million two hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services to provide inpatient youth assessment and treatment programs to serve youth and their families. At least forty percent of new inpatient treatment slots provided under this section shall be located east of the Cascade mountains. Up to fifteen of the treatment slots created under this section shall be staff-secure. Inpatient treatment programs shall incorporate appropriate outpatient and aftercare programs. In addition, within appropriated funds, the department shall develop intensive outpatient treatment services for children and youth for whom inpatient treatment is inappropriate or unavailable.

NEW SECTION. Sec. 415. ADULT CORRECTIONS—SUBSTANCE ABUSE PROGRAM. The sum of five hundred sixty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections to develop and implement a model to deliver a continuum of care to substance-dependent offenders.

NEW SECTION. Sec. 416. WORK RELEASE DRUG TREATMENT. The sum of one hundred ten thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections to develop substance abuse treatment programs at the Reynolds work release facility and the eastern Washington prerelease facility.

NEW SECTION. Sec. 417. INTENSIVE DRUG SURVEILLANCE.

The sum of one million one hundred twenty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections for continued funding for the community corrections drug surveillance unit in King county and to initiate similar units in Pierce and Yakima counties.

NEW SECTION. Sec. 418. DRUG ABUSE RESISTANCE PROGRAM. The sum of two hundred thirty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the criminal justice training commission to support the drug abuse resistance education program.

NEW SECTION. Sec. 419. METHADONE TREATMENT. The sum of four hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for distribution to counties for methadone treatment pursuant to chapter 69.54 RCW, subject to the following conditions and limitations: This sum is provided solely for the purpose of increasing the number of persons for whom methadone treatment is available, and the department shall distribute funds under this section to a county only for the establishment of new treatment centers and only if a county attempts to recover the cost of methadone treatment by charging user fees based on ability to pay.

NEW SECTION. Sec. 420. TREATMENT ALTERNATIVES TO STREET CRIME—DOMESTIC CASES. The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases under chapter 26.09, 26.10, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under section 401 of this act.

NEW SECTION. Sec. 421. ADULT CORRECTIONS—DRUG DETECTION AND TREATMENT. The sum of eight hundred seventy-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and

education account to the department of corrections for the purpose of enhancing detection and treatment of the use of illegal drugs in correctional facilities.

NEW SECTION. Sec. 422. ALCOHOL AND DRUG ABUSE TREATMENT AND SHELTER ACT. The sum of ten million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services, for the alcohol and drug abuse treatment and shelter act program.

NEW SECTION. Sec. 423. COMMUNITY-POLICE PARTNERSHIP. (1) The criminal justice training commission in cooperation with the United States department of justice department of community relations (region x) shall conduct an assessment of successful community-police partnerships throughout the United States. The commission shall develop training for local law enforcement agencies targeted toward those communities where there has been a substantial increase in drug crimes. The purpose of the training is to facilitate cooperative community-police efforts and enhanced community protection to reduce drug abuse and related crimes. The training shall include but not be limited to conflict management, ethnic sensitivity, cultural awareness, and effective community policing. The commission shall report its findings and progress to the legislature by January 1990.

(2) Local law enforcement agencies are encouraged to form community-police partnerships in areas of substantial drug crimes. These partnerships are encouraged to organize citizen-police task forces which meet on a regular basis to promote greater citizen involvement in combatting drug abuse and to reduce tension between police and citizens. Partnerships that are formed are encouraged to report to the criminal justice training commission of their formation and progress.

(3) The sum of one hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the criminal justice training commission for the purposes of subsection (1) of this section.

PART V REVENUE PROVISIONS

Sec. 501. Section 3, chapter 158, Laws of 1935 as last amended by section 11, chapter 452, Laws of 1987 and RCW 66.24.210 are each amended to read as follows:

(1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall

not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 1993. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on wine containing alcohol in an amount equal to or more than fourteen percent by volume when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

Sec. 502. Section 24, chapter 62, Laws of 1933 ex. sess. as last amended by section 11, chapter 3, Laws of 1983 2nd ex. sess. and RCW 66.24.290 are each amended to read as follows:

(1) Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of two dollars and sixty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of two dollars and sixty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his place of business or warehouse of such barrels or packages. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The revenue stamps herein provided for need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) Until July 1, 1995, an additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(4) The tax imposed under this section shall not apply to "strong beer" as defined in this title.

Sec. 503. Section 82.08.150, chapter 15, Laws of 1961 as last amended by section 12, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.08.150 are each amended to read as follows:

(1) There is levied and shall be collected a tax upon each retail sale of spirits, or strong beer in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such

sales including sales by the Washington state liquor stores and agencies, but excluding sales to class H licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits, or strong beer in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to class H licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees.

(4) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) Until July 1, 1995, an additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(6) The tax imposed in RCW 82.08.020, as now or hereafter amended, shall not apply to sales of spirits or strong beer in the original package.

~~((6))~~ (7) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

~~((7))~~ (8) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW.

Sec. 504. Section 82.24.020, chapter 15, Laws of 1961 as last amended by section 1, chapter 80, Laws of 1987 and RCW 82.24.020 are each amended to read as follows:

(1) There is levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of eleven and one-half mills per cigarette.

(2) Until July 1, 1995, an additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an

amount equal to the rate of one and one-half mills per cigarette. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(3) Wholesalers and retailers subject to the payment of this tax may, if they wish, absorb one-half mill per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

~~((3))~~ (4) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his designee by a person other than the purchaser, constructive possession by the purchaser or his designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.

NEW SECTION. Sec. 505. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Possession" means the control of a carbonated beverage or syrup located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a carbonated beverage or syrup or to authorize the sale or use by another.

(3) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which a tax has been paid under this chapter on the carbonated beverage or on the syrup in the carbonated beverage.

(4) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(5) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. Sec. 506. (1) A tax is imposed on the privilege of possession of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to eighty-four one-thousandths of a cent per ounce for carbonated beverages and seventy-five cents per gallon for syrups. Fractional amounts shall be taxed proportionally.

(2) Moneys collected under this chapter shall be deposited in the drug enforcement and education account under section 401 of this act.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

NEW SECTION. Sec. 507. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed carbonated beverage or syrup. If tax due under this chapter has not been paid with respect to a carbonated beverage or syrup, the department may collect the tax from any person who has had possession of the carbonated beverage or syrup. If the tax is paid by any person other than the first person having taxable possession of a carbonated beverage or syrup, the amount of tax paid constitutes a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(3) Any possession of a carbonated beverage or syrup where the first possession occurred before the effective date of this section.

NEW SECTION. Sec. 508. (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(2) For the purpose of this section:

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the act or privilege of possessing carbonated beverages or syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the carbonated beverage or syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof.

NEW SECTION. Sec. 509. This chapter shall expire July 1, 1995.

NEW SECTION. Sec. 510. Sections 505 through 509 of this act shall constitute a new chapter in Title 82 RCW.

PART VI MISCELLANEOUS

NEW SECTION. Sec. 601. A new section is added to chapter 69.50 RCW to read as follows:

The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for

by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

NEW SECTION. Sec. 602. The legislature ratifies the juvenile disposition standards commission guidelines submitted to the 1989 legislature and endorses the action to increase penalties for juvenile drug offenders.

NEW SECTION. Sec. 603. (1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of those programs that have the most potential for useful program review.

(2) The legislative budget committee shall prepare a plan to conduct studies of the effectiveness of programs initiated in this act. A plan for study shall include:

- (a) Institution-based drug testing;
- (b) The juvenile offenders structured residential program;
- (c) The state-wide drug prosecution assistance program;
- (d) Community mobilization;
- (e) Drug and alcohol abuse prevention and early intervention in schools; and

(f) Maternity care support services for alcohol and drug-abusing pregnant women.

(3) The plan for conducting studies, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates are to be provided to the appropriate policy and fiscal committees of the house and senate by December 1, 1989. The plan may include proposals to use contract evaluators and shall identify ways to measure program progress and outcomes.

(4) In order to establish a beginning point for any future studies of the effectiveness of programs initiated in this act, all programs proposed for analysis in this section shall submit a plan detailing expenditures related to goals and objectives of the program being initiated, to the legislative budget committee by October 1, 1989.

NEW SECTION. Sec. 604. A new section is added to chapter 44.28 RCW to read as follows:

The legislative budget committee shall cause to be conducted a review of the taxes and the dedication of revenues for drug enforcement and education purposes and a review of the programs as provided in section 603 of this act. The legislative budget committee shall report its findings to the legislature by January 1, 1995, and include in its report specific recommendations as to whether public policy would be best served by continuation of the programs, taxes, and dedication of revenues for the drug enforcement and education account.

NEW SECTION. Sec. 605. Part, subpart, and section headings and the index as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 606. 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. 607. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

- (1) Sections 502 and 504 of this act shall take effect June 1, 1989; and
- (2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989.

Passed the House April 22, 1989.

Passed the Senate April 22, 1989.

Approved by the Governor May 7, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 7, 1989.

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

"I am returning herewith, without my approval as to section 107, Engrossed Second Substitute House Bill No. 1793 entitled:

"AN ACT Relating to alcohol and controlled substances abuse."

This omnibus bill represents a major accomplishment by the Legislature in working to address the serious and pressing issue of substance abuse in our state and society. The Legislature is to be commended for its efforts to address this issue in a comprehensive fashion. It also contains the essence of five Governor-request bills which address this issue.

Section 107 of the bill would prohibit and force closure of needle exchange programs, currently operating in Tacoma and Seattle which are a means to reduce HIV/AIDS transmission and encourage treatment referral. These model programs have received national attention for their innovative and credible management of the needle exchange. Both programs are operated and strictly controlled by local public health authorities and are structured to accommodate maximum research benefit. I do not condone use of illegal drugs or their taking by intravenous means. The reality is that these programs have very little potential for encouraging more illegal drug use but a very high potential for limiting the spread of serious and deadly diseases which impact not only the persons involved but others. For both humane and economic reasons, we must do everything we can to halt the spread of AIDS.

With the exception of section 107, Engrossed Second Substitute House Bill No. 1793 is approved."

CHAPTER 272

[Substitute House Bill No. 1322]

PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS—COST OF LIVING ADJUSTMENTS

AN ACT Relating to cost-of-living adjustments for members of the public employees' and teachers' retirement systems; amending RCW 41.32.005, 41.32.485, 41.32.487, 41.40.005,

41.40.198, and 41.40.1981; adding a new section to chapter 41.40 RCW; adding a new section to chapter 41.32 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature recognizes that inflation erodes the purchasing power of retirement benefits. Although the benefit provided to state retirees from social security is fully protected, the benefits provided by the public employees' retirement system, plan I, and the teachers' retirement system, plan I provide an automatic cost-of-living adjustment only for persons who receive the minimum benefit.

The purpose of this act is to add provisions to the teachers' retirement system and the public employees' retirement system which will help mitigate the impact of inflation on retirees of those systems. These additional provisions are intended to reflect and implement the following policies:

(1) The minimum benefit is increased in order to provide a more adequate basic standard of living to persons who retired long ago under lower salaries and less generous retirement benefit formulas; and

(2) Retirees whose benefits have lost forty percent of their purchasing power are made eligible for automatic adjustments which are provided in a manner that is consistent with the retirement age and benefit provisions of plan II of the teachers' retirement system and the public employees' retirement system.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW to read as follows:

(1) Beginning July 1, 1989, and every year thereafter, the department shall determine the following information for each retired member or beneficiary who is over the age of sixty-five:

(a) The dollar amount of the retirement allowance received by the retiree at age sixty-five, to be known for the purposes of this section as the "age sixty-five allowance";

(b) The index for the calendar year prior to the year that the retiree reached age sixty-five, to be known for purposes of this section as "index A";

(c) The index for the calendar year prior to the date of determination, to be known for purposes of this section as "index B";

(d) The ratio obtained when index B is divided by index A, to be known for the purposes of this section as the "full purchasing power ratio"; and

(e) The value obtained when the retiree's age sixty-five allowance is multiplied by sixty percent of the retiree's full purchasing power ratio, to be known for the purposes of this section as the "target benefit."

(2) Beginning with the July payment, the retiree's age sixty-five allowance shall be adjusted to be equal to the retiree's target benefit. In no event, however, shall the adjusted allowance:

(a) Be smaller than the retirement allowance received without the adjustment; nor

(b) Differ from the previous year's allowance by more than three percent.

(3) For members who retire after age sixty-five, the age sixty-five allowance shall be the initial retirement allowance received by the member.

(4) For beneficiaries of members who die prior to age sixty-five: (a) The age sixty-five allowance shall be the allowance received by the beneficiary on the date the member would have turned age sixty-five; and (b) index A shall be the index for the calendar year prior to the year the member would have turned age sixty-five.

(5) Where the pension payable to a beneficiary was adjusted at the time the benefit commenced, the benefit provided by this section shall be adjusted in a manner consistent with the adjustment made to the beneficiary's pension.

(6) For the purposes of this section:

(a) "Index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor;

(b) "Retired member" or "retiree" means any member who has retired for service or because of duty or nonduty disability, or the surviving beneficiary of such a member.

NEW SECTION. Sec. 3. A new section is added to chapter 41.32 RCW to read as follows:

(1) Beginning July 1, 1989, and every year thereafter, the department shall determine the following information for each retired member or beneficiary who is over the age of sixty-five:

(a) The dollar amount of the retirement allowance received by the retiree at age sixty-five, to be known for the purposes of this section as the "age sixty-five allowance";

(b) The index for the calendar year prior to the year that the retiree reached age sixty-five, to be known for purposes of this section as "index A";

(c) The index for the calendar year prior to the date of determination, to be known for purposes of this section as "index B";

(d) The ratio obtained when index B is divided by index A, to be known for the purposes of this section as the "full purchasing power ratio"; and

(e) The value obtained when the retiree's age sixty-five allowance is multiplied by sixty percent of the retiree's full purchasing power ratio, to be known for the purposes of this section as the "target benefit."

(2) Beginning with the July payment, the retiree's age sixty-five allowance shall be adjusted to be equal to the retiree's target benefit. In no event, however, shall the adjusted allowance:

(a) Be smaller than the retirement allowance received without the adjustment; nor

(b) Differ from the previous year's allowance by more than three percent.

(3) For members who retire after age sixty-five, the age sixty-five allowance shall be the initial retirement allowance received by the member.

(4) For beneficiaries of members who die prior to age sixty-five: (a) The age sixty-five allowance shall be the allowance received by the beneficiary on the date the member would have turned age sixty-five; and (b) index A shall be the index for the calendar year prior to the year the member would have turned age sixty-five.

(5) Where the pension payable to a beneficiary was adjusted at the time the benefit commenced, the benefit provided by this section shall be adjusted in a manner consistent with the adjustment made to the beneficiary's pension.

(6) For the purposes of this section:

(a) "Index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor;

(b) "Retired member" or "retiree" means any member who has retired for service or because of duty or nonduty disability, or the surviving beneficiary of such a member.

Sec. 4. Section 19, chapter 293, Laws of 1977 ex. sess. and RCW 41.32.005 are each amended to read as follows:

The provisions of the following sections of this chapter shall apply only to those persons who establish membership in the retirement system on or before June 30, 1977: RCW 41.32.250, 41.32.260, 41.32.270, 41.32.280, 41.32.290, 41.32.300, 41.32.310, 41.32.320, 41.32.330, 41.32.340, 41.32.350, 41.32.360, 41.32.365, 41.32.366, 41.32.380, 41.32.390, 41.32.430, 41.32.440, 41.32.470, 41.32.480, 41.32.491, 41.32.492, 41.32.493, 41.32.4931, 41.32.4932, 41.32.494, 41.32.4943, 41.32.4944, 41.32.4945, 41.32.497, 41.32.498, 41.32.4982, 41.32.4983, 41.32.499, 41.32.500, 41.32.510, 41.32.520, 41.32.522, 41.32.523, 41.32.530, 41.32.540, 41.32.550, 41.32.560, 41.32.561, 41.32.565, 41.32.567, 41.32.570, section 3 of this act, and 41.32.583.

Sec. 5. Section 2, chapter 96, Laws of 1979 ex. sess. as last amended by section 1, chapter 455, Laws of 1987 and RCW 41.32.485 are each amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, effective July 1, (~~1987~~) 1989, as a cost-of-living adjustment, no beneficiary receiving a

retirement allowance pursuant to this chapter shall receive, as the pension portion of that retirement allowance, less than ~~((thirteen dollars and fifty))~~ fourteen dollars and eighty-two cents per month for each year of service creditable to the person whose service is the basis of the pension. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ~~((thirteen dollars and fifty))~~ fourteen dollars and eighty-two cents. Where the pension payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the retirement allowance of each beneficiary who either is receiving benefits pursuant to RCW 41.32.520 or 41.32.550 as of December 31, 1978, or commenced receiving a monthly retirement allowance under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under RCW 41.32.499(6) as of July 1, 1979, or July 1, 1980, for the affected beneficiaries. Such adjustment shall be calculated as follows:

(a) Retirement allowances to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those beneficiaries to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each beneficiary to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service.

(3) The provisions of subsections (1) and (2) of this section shall not be applicable to those receiving benefits pursuant to RCW 41.32.540 or 41.32-.760 through 41.32.825.

Sec. 6. Section 3, chapter 455, Laws of 1987 and RCW 41.32.487 are each amended to read as follows:

Beginning July 1, ~~((1988))~~ 1989, and every year thereafter, the department shall determine the following information for the minimum retirement allowance provided by RCW 41.32.485(1):

(1) The dollar amount of the minimum retirement allowance as of July 1, ~~((1988))~~ 1989, after the increase provided in section 5 of this act;

(2) The index for the ~~((1986))~~ 1987 calendar year, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the minimum retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the minimum retirement allowance as of July 1, ~~((1987))~~ 1989;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

Sec. 7. Section 21, chapter 295, Laws of 1977 ex. sess. as amended by section 6, chapter 249, Laws of 1979 ex. sess. and RCW 41.40.005 are each amended to read as follows:

The provisions of the following sections of this chapter shall apply only to persons who establish membership in the retirement system on or before September 30, 1977: RCW 41.40.150, 41.40.160, 41.40.170, 41.40.180, 41.40.185, 41.40.190, 41.40.193, 41.40.195, 41.40.200, 41.40.210, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.260, 41.40.270, 41.40.280, 41.40.300, 41.40.310, 41.40.320, section 2 of this act, and 41.40.330.

Sec. 8. Section 1, chapter 96, Laws of 1979 ex. sess. as last amended by section 2, chapter 455, Laws of 1987 and RCW 41.40.198 are each amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, effective July 1, ~~((1987))~~ 1989, as a cost-of-living adjustment, no beneficiary receiving a retirement allowance pursuant to this chapter shall receive, as the pension portion of that retirement allowance, less than ~~((thirteen dollars and fifty))~~ fourteen dollars and eighty-two cents per month for each year of service creditable to the person whose service is the basis of the pension. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ~~((thirteen dollars and fifty))~~ fourteen dollars and eighty-two cents. Where the pension payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) The provisions of subsection (1) of this section shall not be applicable to those receiving benefits pursuant to RCW 41.40.220(1), 41.44.170(5), or 41.40.610 through 41.40.740. For persons who served as

elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month for each year of creditable service.

Sec. 9. Section 4, chapter 455, Laws of 1987 and RCW 41.40.1981 are each amended to read as follows:

Beginning July 1, (~~(1988)~~) 1989, and every year thereafter, the department shall determine the following information for the minimum retirement allowance provided by RCW 41.40.198(1):

(1) The dollar amount of the minimum retirement allowance as of July 1, (~~(1988)~~) 1989, after the increase provided in section 8 of this act;

(2) The index for the (~~(1986)~~) 1987 calendar year, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the minimum retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the minimum retirement allowance as of July 1, (~~(1987)~~) 1988;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

Persons who served as elected officials and whose accumulated employee contributions and credited interest were less than seven hundred fifty dollars at the time of retirement shall not receive the benefit provided by this section.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 7, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 273

[Substitute Senate Bill No. 5418]

STATE RETIREMENT SYSTEMS—ACTUARIAL FUNDING

AN ACT Relating to actuarial funding of state pension systems; amending RCW 41.26.005, 41.26.040, 41.26.070, 41.26.080, 41.26.450, 41.32.005, 41.32.030, 41.32.401, 41.32.403, 41.32.775, 41.40.005, 41.40.080, 41.40.361, 41.40.370, 41.40.650, 43.43.220, 43.88.090, 41.40.160, 41.40.405, and 41.32.570; adding a new chapter to Title 41 RCW; repealing RCW 41.04.040, 41.04.050, 41.04.280, 41.32.110, 41.32.4982, 41.32.4983, 41.40.065, 41.32.150, 43.43.200, 43.88.085, and 82.32.400; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement system, chapter 41.26 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plan II, and the law enforcement officers' and fire fighters' retirement system plan II as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, and the law enforcement officers' and fire fighters' retirement system plan I not later than June 30, 2024;

(3) To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan I members and all benefits for plan II members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service.

NEW SECTION. Sec. 2. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the economic and revenue forecast council created in RCW 82.01.130.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system prior to October 1, 1977.

(4) "Law enforcement officers' and fire fighters' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system on or after October 1, 1977.

(5) "Public employees' retirement system plan I" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system prior to October 1, 1977.

(6) "Public employees' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system on or after October 1, 1977.

(7) "Teachers' retirement system plan I" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system prior to October 1, 1977.

(8) "Teachers' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system on or after October 1, 1977.

(9) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(10) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(11) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

NEW SECTION. Sec. 3. (1) The economic and revenue forecast council shall adopt the economic assumptions used by the state actuary in conducting valuation studies of the state retirement systems.

(2) Beginning September 1, 1989, and every six years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system. The council shall review the information submitted by the state actuary and shall recommend any adjustments which may be needed to the state or employer contribution rates contained in sections 6 and 7 of this act for the public employees' retirement system; the teachers' retirement system; the law enforcement officers' and fire fighters' retirement system; and the Washington state patrol retirement system.

(3) The council may utilize information provided by the state actuary and such other information as it may request.

NEW SECTION. Sec. 4. (1) The adoption of the economic assumptions and the recommendation of changes in employer and state contribution rates shall be by affirmative vote of at least five members of the council.

(2) The employer and state contribution rates recommended by the council shall be the level percentages of pay which are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the

unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plan II, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with the provisions of RCW 41.40.650, 41.32.775, and 41.26.450, respectively.

NEW SECTION. Sec. 5. (1) Beginning September 1, 1990, employers of members of the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in sections 6 and 7 of this act.

(2) Beginning September 1, 1990, the state shall make contributions to the law enforcement officers' and fire fighters' retirement system based on the rates established in sections 6 and 7 of this act. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) Beginning September 1, 1990, the department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system, using the combined rates established in sections 6 and 7 of this act regardless of the level of pension funding provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan I fund and public employees' retirement system plan II fund as follows: The contributions necessary to fully fund the public employees' retirement system plan II employer contribution required by RCW 41.40.650 shall first be deposited in the public employees' retirement system plan II fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

The employer contributions for the teachers' retirement system, and the state contributions for the law enforcement officers' and fire fighters' retirement system shall be allocated in the same manner as the public employees' retirement system and in accordance with the law enforcement officers' and fire fighters' retirement system plan II and the teachers' retirement system plan II contribution rates required by RCW 41.26.450 and 41.32.775 respectively.

NEW SECTION. Sec. 6. Beginning September 1, 1990, the basic state contribution rate for the law enforcement officers' and fire fighters' retirement system, and the basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall be as follows:

- (1) 7.10% for all members of the public employees' retirement system;
- (2) 12.60% for all members of the teachers' retirement system;
- (3) 16.88% for all members of the law enforcement officers' and fire fighters' retirement system; and
- (4) 21.47% for all members of the Washington state patrol retirement system.

NEW SECTION. Sec. 7. (1) Beginning September 1, 1990, in addition to the basic employer contribution rate established in section 6 of this act, the department shall also charge employers of public employees' retirement system, teachers' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems after January 1, 1991. The supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) Beginning September 1, 1990, in addition to the basic state contribution rate established in section 6 of this act for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system after January 1, 1990. This supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650, 41.32.775, or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for

active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

NEW SECTION. Sec. 8. In addition to the basic and supplemental employer contributions required by sections 6 and 7 of this act the department may also require additional employer contributions as provided by law.

NEW SECTION. Sec. 9. The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial investigation of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, and the budget writing committees of the Washington house of representatives and senate. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems.

Sec. 10. Section 18, chapter 294, Laws of 1977 ex. sess. as last amended by section 5, chapter 102, Laws of 1985 and RCW 41.26.005 are each amended to read as follows:

(1) "Law enforcement officers' and fire fighters' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system prior to October 1, 1977. The provisions of the following sections of this chapter shall apply only to ((persons who establish membership in the retirement system on or before September 30, 1977)) members of plan I: RCW 41.26.080, 41.26.090, 41.26.100, 41.26.110, 41.26.120, 41.26.125, 41.26.130, 41.26.140, 41.26.150, 41.26.160, 41.26.170, 41.26.190, 41.26.200, 41.26.240, 41.26.250, 41.26.260, and 41.26.270.

(2) "Law enforcement officers' and fire fighters' retirement system plan II" or "plan II" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters'

retirement system on or after October 1, 1977. The provisions of RCW 41.26.400 through 41.26.550 shall apply only to members of plan II.

Sec. 11. Section 4, chapter 209, Laws of 1969 ex. sess. as last amended by section 1, chapter 45, Laws of 1979 ex. sess. and RCW 41.26.040 are each amended to read as follows:

The Washington law enforcement officers' and fire fighters' retirement system is hereby created for fire fighters and law enforcement officers.

(1) (a) Notwithstanding RCW 41.26.030(8) and except as provided in subsection (1)(b) of this section, all fire fighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act except as provided in subsection (2) of this section.

(b) No fire fighter or law enforcement officer who commences a period of employment on or after July 1, 1979, as a participant under the federal comprehensive employment and training act of 1973 (CETA) (29 U.S.C. Sec. 801 et seq.), as amended, shall be a member of this system during the period of such participation unless, at the commencement of the participation under CETA, the fire fighter or law enforcement officer either:

(i) Has at least five years of service and the full amount of the employee's contributions for such service remains on deposit in the system; or

(ii) Has previously been retired from this system.

(2) Any employee serving as a law enforcement officer or fire fighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his retirement benefits earned under this chapter shall be computed and paid. In addition, his benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the state-wide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred: PROVIDED, That any death in line of

duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred.

(3) All funds held by any firemen's or policemen's relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose.

(4) Any member transferring from the Washington public employees' retirement system or the state-wide city employees' retirement system shall have transferred from the appropriate fund of the prior system of membership, a sum sufficient to pay into the Washington law enforcement officers' and fire fighters' retirement system fund the amount of the employees' and employers' contributions plus credited interest in the prior system for all service, as defined in this chapter, from the date of the employee's entrance therein until March 1, 1970. Except as provided for in subsection (2), such transfer of funds shall discharge said state retirement systems from any further obligation to pay benefits to such transferring members with respect to such service.

~~((5) All unfunded liabilities created by this or any other section of this chapter shall be computed by the actuary in his biennial evaluation. Such computation shall provide for amortization of the unfunded liabilities over a period of not more than forty years from March 1, 1970. The amount thus computed as necessary shall be reported to the governor by the department of retirement systems for inclusion in the budget. The legislature shall make the necessary appropriation to fund the unfunded liability from the state general fund beginning with the 1971-1973 biennium.))~~

Sec. 12. Section 7, chapter 209, Laws of 1969 ex. sess. as last amended by section 28, chapter 3, Laws of 1981 and RCW 41.26.070 are each amended to read as follows:

~~((A fund is))~~ Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into ((it)) them in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of plan II. The state investment board has full power to invest or reinvest the funds created by this chapter in the securities authorized by RCW 43.84.150.

(1) The state treasurer shall be the custodian of all funds of the retirement system and all disbursements therefrom shall be paid by the state treasurer upon vouchers duly authorized by the ~~((retirement board))~~ department and bearing the signature of the duly authorized officer of the ~~((retirement board))~~ department.

(2) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of the retirement fund or the department of retirement systems expense fund.

(3) Into the retirement system fund shall be paid all moneys received by the ~~((retirement board))~~ department, and paid therefrom shall be all refunds, adjustments, retirement allowances and other benefits provided for herein. All contributions by employers for the expense of operating the retirement system as provided for herein shall be transferred by the state treasurer from the retirement system fund to the department of retirement systems expense fund upon authorization of the ~~((retirement board))~~ department.

(4) There is hereby utilized for the purposes of this chapter, the department of retirement systems expense fund, as provided for in RCW 41.40.080 and from which shall be paid the expenses of the administration of this retirement system.

(5) In order to reimburse the department of retirement systems expense fund on an equitable basis the ~~((retirement board))~~ department shall ascertain and report to each employer the ~~((sum))~~ contribution rate necessary to defray its proportional share of the entire expense of the administration of this chapter during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the said administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(6) The ~~((retirement board))~~ department shall compute and bill each employer at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each such employer shall be made on a percentage rate of salary established by the ~~((board))~~ department: PROVIDED, That the ~~((retirement board))~~ department may at its discretion establish a system of billing based upon calendar year

quarters in which event the said billing shall be at the end of each such quarter.

(7) For the purpose of providing amounts to be used to defray the cost of such administration, the ~~((retirement board))~~ department shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the department of retirement systems expense fund sufficient to cover estimated expenses for the said biennium.

(8) RCW 41.26.060, 41.26.070 and 41.26.085 shall take effect commencing on January 1, 1972.

Sec. 13. Section 8, chapter 209, Laws of 1969 ex. sess. and RCW 41.26.080 are each amended to read as follows:

The total liability of ~~((this))~~ the plan I system shall be funded as follows:

(1) Every plan I member shall have deducted from each payroll a sum equal to six percent of his basic salary for each pay period.

(2) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan I employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

~~(3) ((The biennial actuarial evaluation required by RCW 41.26.060(2)) shall establish the total liability for this system. This liability shall be divided into current service liability and prior service liability. The contributions required by (1) and (2) above shall be applied toward the current service liability with the balance of the current service liability to be appropriated from the state general fund. The prior service liability shall be amortized over a period of not more than forty years from March 1, 1970. The amount thus computed shall be added to the current service liability to be appropriated from the state general fund.~~

~~This total amount shall be reported to the governor by the director of the retirement system, upon approval of the board, for inclusion in the budget. The legislature shall make the necessary appropriation from the state general fund to the Washington law enforcement officers' and fire fighters' retirement fund after considering the estimates as prepared and submitted. The transfer of funds from the state general fund to the retirement system shall be at a rate determined by the board of trustees on the basis of the latest actuarial valuation. The total amount of such transfers for a biennium shall not exceed the total amount appropriated by the legislature.)~~ The remaining liabilities of the plan I system shall be funded as provided in sections 1 through 9 of this act.

(4) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by

such person during the period covered by such payments, except his claim to the benefits to which he may be entitled under the provisions of this chapter.

Sec. 14. Section 6, chapter 294, Laws of 1977 ex. sess. as last amended by section 1, chapter 268, Laws of 1986 and RCW 41.26.450 are each amended to read as follows:

The required contribution rates to the ((retirement)) plan II system for members, employers, and the state of Washington shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates.

The member, the employer and the state shall each contribute the following shares of the cost of the retirement system:

Member	50%
Employer	30%
State	20%

Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit.

Any adjustments in contribution rates required from time to time for future costs shall likewise be shared proportionally by the members, employers, and the state (~~PROVIDED, That the costs of amortizing the unfunded supplemental present value of the retirement system for persons who established membership before September 30, 1977, shall be borne in full by the state~~)).

Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribution required by this section shall be borne in full by the state or by that employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members' contributions required by this section shall be deducted from the members basic salary each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. The state's contribution required by this section shall be transferred to the plan II fund from the total contributions transferred by the state treasurer under sections 6 and 7 of this act.

Sec. 15. Section 19, chapter 293, Laws of 1977 ex. sess. and RCW 41.32.005 are each amended to read as follows:

(1) "Teachers' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system prior to July 1, 1977. The provisions of the following sections of this chapter shall apply only to ((those persons who

~~establish membership in the retirement system on or before June 30, 1977))~~
members of plan I: RCW 41.32.250, 41.32.260, 41.32.270, 41.32.280, 41-
.32.290, 41.32.300, 41.32.310, 41.32.320, 41.32.330, 41.32.340, 41.32.350,
41.32.360, 41.32.365, 41.32.366, 41.32.380, 41.32.390, 41.32.430, 41.32-
.440, 41.32.470, 41.32.480, 41.32.491, 41.32.492, 41.32.493, 41.32.4931,
41.32.4932, 41.32.494, 41.32.4943, 41.32.4944, 41.32.4945, 41.32.497, 41-
.32.498, ((41.32.4982, 41.32.4983;)) 41.32.499, 41.32.500, 41.32.510, 41-
.32.520, 41.32.522, 41.32.523, 41.32.530, 41.32.540, 41.32.550, 41.32.560,
41.32.561, 41.32.565, 41.32.567, 41.32.570, and 41.32.583.

(2) "Teachers' retirement system plan II" or "plan II" means the benef-
its and funding provisions covering persons who first became members of
the teachers' retirement system on or after July 1, 1977. The provisions of
RCW 41.32.760 through 41.32.830 shall apply only to the members of plan
II.

Sec. 16. Section 3, chapter 80, Laws of 1947 as last amended by section 7, chapter 52, Laws of 1982 1st ex. sess. and RCW 41.32.030 are each amended to read as follows:

All of the assets of the retirement system shall be credited according to the purposes for which they are held, to ~~((a fund))~~ two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of plan II.

In the records of the teachers' retirement system the teachers' retirement fund plan I fund shall be subdivided into the annuity fund, the annuity reserve fund, the survivors' benefit fund, the pension reserve fund, the disability reserve fund, the death benefit fund, the income fund, the expense fund, and such other funds as may from time to time be created by the director for the purpose of the internal accounting record.

Sec. 17. Section 11, chapter 14, Laws of 1963 ex. sess. as last amended by section 1, chapter 236, Laws of 1984 and RCW 41.32.401 are each amended to read as follows:

~~((1) For the purpose of establishing and maintaining an actuarial reserve adequate to meet present and future liabilities of the system and to pay for an equitable portion of the operating expenses of the department; the director shall determine the necessary contribution rates to be made by each employer on all members' total earnable compensation on the basis of the latest valuation prepared by the state actuary, and shall include a percentage contribution of the total earnable compensation, to be known as the "normal contribution" and an additional percentage contribution of such earnable compensation, to be known as the "unfunded liability contribution." The director shall notify employers of such rates at least thirty days~~

~~prior to their effective date. Such determination shall provide for amortization of unfunded retirement system liabilities over a period of not more than fifty years from July 1, 1964. The legislature shall appropriate to the superintendent of public instruction the full amount recommended by the state actuary for the employer contribution rates for state funded certificated staff. The amounts shall be deposited in the teachers' retirement fund for the payment of pensions, survivors' benefits, and the employer's share of the operating expenses for the system. However, a school district for the 1985-86 school year shall not be required to pay to the department of retirement systems for the employer contribution to the teachers' retirement system; any amount in excess of the funds received by such school district from the state through the office of the superintendent of public instruction for such purpose, and for the 1986-87 school year and thereafter, a school district shall not be required to pay at a rate exceeding the rate that the director sets for the employer contribution for each employee.~~

(2)) In order to equitably reimburse the department of retirement systems expense fund, the director shall ascertain and report to each employer the contribution rate necessary to defray its proportional share of the cost of administering this chapter during either the next biennium or fiscal year, whichever is required to provide the amounts needed to defray such cost of administration. The director shall also ascertain at the beginning of either each biennium or each fiscal year, whichever is required, and request from the legislature an appropriation for the department of retirement systems expense fund sufficient to cover estimated expenses for the biennium or fiscal year.

Sec. 18. Section 3, chapter 236, Laws of 1984 and RCW 41.32.403 are each amended to read as follows:

The amount paid by each employer shall be computed by applying the rates established ~~((by RCW 41.32.403))~~ under sections 1 through 9 of this act to the total earnable compensation of the employer's members as shown on the current payrolls of the employer. The employer's contribution shall be paid at the end of each month in the amount due for that month.

Sec. 19. Section 6, chapter 293, Laws of 1977 ex. sess. as last amended by section 2, chapter 268, Laws of 1986 and RCW 41.32.775 are each amended to read as follows:

The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary: **PROVIDED**, That the employer contribution shall be contributed as provided in RCW ~~((41.32.403))~~ 41.32.403. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the

plan II fund from the total employer contributions collected under RCW 41.32.403.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers (~~PROVIDED, That the costs of amortizing the unfunded supplemental present value of the retirement system for persons who established membership before September 30, 1977, shall be borne in full by the employers~~).

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members earnable compensation each payroll period. The members contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends and the employers contribution shall be remitted as provided by law.

Sec. 20. Section 21, chapter 295, Laws of 1977 ex. sess. as amended by section 6, chapter 249, Laws of 1979 ex. sess. and RCW 41.40.005 are each amended to read as follows:

(1) "Public employees' retirement system plan I" or "plan I" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system prior to October 1, 1977. The provisions of the following sections of this chapter shall apply only to ((persons who establish membership in the retirement system on or before September 30, 1977)) members of plan I: RCW 41.40.150, 41.40.160, 41.40.170, 41.40.180, 41.40.185, 41.40.190, 41.40.193, 41.40.195, 41.40.200, 41.40.210, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.260, 41.40.270, 41.40.280, 41.40.300, 41.40.310, 41.40.320, and 41.40.330.

(2) "Public employees' retirement system plan II" or "plan II" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system on or after October 1, 1977. The provisions of RCW 41.40.600 through 41.40.740 apply only to members of plan II.

Sec. 21. Section 9, chapter 274, Laws of 1947 as last amended by section 32, chapter 3, Laws of 1981 and RCW 41.40.080 are each amended to read as follows:

(1) All bonds or other obligations purchased according to RCW 43.84.150 shall be forthwith placed in the hands of the state treasurer who is hereby designated as custodian thereof, and it shall be his duty to collect the principal thereof and the interest thereon as the same becomes due and payable, and place the same when so collected into the retirement system's funds.

(2) The state treasurer shall be the custodian of all other funds of the retirement system and all disbursements therefrom shall be paid by the state treasurer upon vouchers duly authorized by the ~~((retirement board))~~ department and bearing the signature of the duly authorized officer of the ~~((retirement board))~~ department.

(3) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of the retirement fund or the department of retirement systems expense fund.

(4) There is hereby established in the state treasury ~~((two))~~ three separate funds, namely:

(a) The public employees' retirement system plan I fund and the public employees' plan II fund, into which shall be paid all moneys received by the ~~((retirement board))~~ department and from which shall be paid all refunds, adjustments, retirement allowances and other benefits provided for herein. The plan I fund shall consist of all moneys paid to finance the benefits, provided to members of plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of plan II. All contributions by members to the department of retirement systems expense fund as provided in RCW 41.40.330 and contributions by employers for the expense of operating the retirement system as provided for herein shall be transferred by the state treasurer from the retirement system fund to the department of retirement systems expense fund upon authorization of the ~~((retirement board))~~ department;

(b) The department of retirement systems expense fund, from which shall be paid the expenses of the administration of the retirement system.

(5) In order to reimburse the department of retirement systems expense fund on an equitable basis the ~~((retirement board))~~ department shall, after crediting the estimated amount to be collected as employees' contributions, ascertain and report to each employer the sum necessary to defray its proportional share of the entire expense of the administration of this chapter during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the said administration as the ratio of

monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(6) The ~~((retirement board))~~ department shall compute and bill each employer at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each such employer shall be made on a percentage rate of salary established by the ~~((board))~~ department: PROVIDED, That the ~~((retirement board))~~ department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(7) For the purpose of providing amounts to be used to defray the cost of such administration, the ~~((retirement board))~~ department shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the department of retirement systems expense fund sufficient to cover estimated expenses for the said biennium.

Sec. 22. Section 4, chapter 231, Laws of 1957 as last amended by section 4, chapter 268, Laws of 1986 and RCW 41.40.361 are each amended to read as follows:

~~((1))~~ For the purpose of this section, the "fundable employer liability" at any date shall be the present value of

(a) all future pension benefits payable in respect of all members in the retirement system at that date, and

(b) all future benefits in respect of beneficiaries then receiving retirement allowances or pensions.

~~(2)~~ The contributions by the employer for benefits under the retirement system shall consist of the sum of a percentage of the compensation of members to be known as the "normal contribution", a percentage of such compensation to be known as the "unfunded liability contribution" and in the case of employers admitted to the retirement system after April 1, 1949, a percentage of such compensation to be known as the "additional contribution". The rates of such contributions shall be determined by the retirement board on the basis of assets and liabilities as shown by actuarial valuation: PROVIDED, That as to state employers effective July 1, 1973 the total combined contributions of the normal contribution and unfunded liability contribution shall not exceed a total combined percentage rate of seven percent for each employer unless authorized by the legislature.

~~(3)~~ After the completion of each actuarial valuation subsequent to the first actuarial valuation of June 30, 1953, the retirement board shall determine the normal contribution rate and such contribution rate shall become effective in the ensuing biennium. In addition the board shall determine the additional employer contribution rate necessary to fund the benefits granted officials holding office pursuant to Articles II and III of the Constitution of

~~the state of Washington and RCW 48.02.010. Said additional employer contribution rate shall be paid in the same manner as the normal contribution and the unfunded liability contribution. Until the unfunded liability contribution shall have been discontinued, such normal contribution rate shall be computed to be sufficient, when applied to the present value of the future compensation of the average new member entering the system, to provide for the payment of all prospective pension benefits in respect of such member. After the unfunded liability contributions have been discontinued, such normal contribution rate shall be determined as the uniform and constant percentage of the prospective compensation of all members of the retirement system at the date of such valuation which is equivalent to the excess of the fundable employer liability over the amount of funds currently standing to the credit of the benefit account fund.~~

~~(4) After the completion of each actuarial valuation subsequent to the first actuarial valuation of June 30, 1953, the retirement board shall determine the unfunded liability contribution, and such rate shall become effective in the ensuing biennium. The unfunded liability contribution rate shall be set at a percentage sufficient to provide for the amortization of unfunded retirement system liabilities over a period of not more than forty years from June 30, 1985. The unfunded liability shall be determined at such date as the excess of the fundable employer liability over the sum of the present value of the future normal contributions payable in respect of all members in the retirement system at that date, and the amount of all funds currently standing to the credit of the benefit account fund. The unfunded liability contributions shall continue until there remains no unfunded liability.~~

~~(5)) Any employer admitted to the retirement system after April 1, 1949, shall make an additional contribution until such time as the sum of such additional contributions equals the amount of contributions which such employer and employee would have been required to contribute between April 1, 1949, and the date of such employer's admission to the retirement system: PROVIDED, That either the employee or employer may make the contributions the employee would have made during the same period of time: PROVIDED FURTHER, That all additional contributions hereunder and under the provisions of RCW 41.40.160(2) must be completed within fifteen years from the date of the employer's admission. Employee contributions for these periods must be made before the member will receive credit for those periods of service, pursuant to such regulations as the ((retirement board)) department may adopt.~~

~~((6) For the biennium beginning July 1, 1971, and ending June 30, 1973, only, and notwithstanding any other provision of the chapter, the rate determined by the board for state employer contributions shall be only the percentage of compensation for members equal to the "normal contribution" computed to be four and thirty-six one-hundredths percent of compensation.))~~

Sec. 23. Section 38, chapter 274, Laws of 1947 as last amended by section 5, chapter 268, Laws of 1986 and RCW 41.40.370 are each amended to read as follows:

(1) The director shall ~~((ascertain and))~~ report to each employer the contribution rates ~~((necessary to meet present and future pension liabilities of the system))~~ required for the ensuing biennium or fiscal year, whichever is applicable. ~~((The amount to be so provided shall be computed by applying the rates of contribution as established by RCW 41.40.361 or 41.40.650 to an estimate of the total compensation earnable of all the said employer's members during the period for which provision is to be made.))~~

(2) Beginning ~~((April 1, 1949, or October 1, 1977, as the case may be))~~ September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established ~~((by RCW 41.40.361 or 41.40.650))~~ in sections 1 through 9 of this act to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. In addition, the director shall determine and collect the additional employer contribution rate necessary to fund the benefits granted officials holding office pursuant to Articles II and III of the Constitution of the state of Washington and RCW 48.02.010. Each said employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls.

Sec. 24. Section 6, chapter 295, Laws of 1977 ex. sess. as last amended by section 6, chapter 268, Laws of 1986 and RCW 41.40.650 are each amended to read as follows:

The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan II fund from the total employer contributions collected under RCW 41.40.370.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers (~~PROVIDED, That the costs of amortizing the unfunded supplemental present value of the retirement system for persons who established membership before September 30, 1977, shall be borne in full by the employers~~)).

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

Sec. 25. Section 43.43.220, chapter 8, Laws of 1965 as amended by section 2, chapter 180, Laws of 1973 1st ex. sess. and RCW 43.43.220 are each amended to read as follows:

~~((+))~~ The Washington state patrol retirement fund shall be the fund from which shall be paid all retirement allowances or benefits in lieu thereof which are payable as provided herein. The expenses of operating the retirement system shall be paid from appropriations made for the operation of the Washington state patrol.

~~((2))~~ The "fundable employer liability" at any date shall be the present value of:

(a) All future pension benefits payable in respect of all members in the retirement system at that date; and

(b) All future benefits in respect of beneficiaries then receiving retirement allowances or pensions.

~~(3)~~ The contributions by the state for benefits under the retirement system shall consist of the sum of a percentage of the compensation of members to be known as the "normal contribution", and a percentage of such compensation to be known as the "unfunded liability contribution". The rates of such contributions shall be determined by the retirement board on the basis of assets and liabilities as shown by actuarial valuation.

~~(4)~~ After the completion of each actuarial valuation, the retirement board shall determine or redetermine the normal contribution rate and such contribution rate shall become effective in the ensuing biennium. Until the

~~unfunded liability contribution shall have been discontinued, such normal contribution rate shall be computed to be sufficient, when applied to the present value of the future compensation of the average new member entering the system, to provide for the payment of all prospective pension benefits in respect of such member. After the unfunded liability contributions have been discontinued, such normal contribution rate shall be determined as the uniform and constant percentage of the prospective compensation of all members in the retirement system at the date of such valuation which is equivalent to the excess of the fundable employer liability over the amount of funds currently standing to the credit of the retirement fund.~~

~~(5) After the completion of each actuarial valuation, the retirement board shall determine or redetermine the unfunded liability contribution rate, and such rate shall become effective in the ensuing biennium. The unfunded liability contribution rate shall not be less than the uniform and constant percentage of the prospective compensation of all members in the retirement system for the forty-year period following the date of such valuation which is equivalent to the unfunded liability. The unfunded liability shall be determined at such date as the excess of the fundable employer liability over the sum of the present value of the future normal contributions payable in respect of all members in the retirement system at that date, and the amount of all funds currently standing to the credit of the retirement fund. The unfunded liability contributions shall continue until there remains no unfunded liability.~~

~~(6) The retirement board shall estimate biennially the amount required to maintain the retirement fund for the ensuing biennium:))~~

Sec. 26. Section 43.88.090, chapter 8, Laws of 1965 as last amended by section 35, chapter 505, Laws of 1987 and RCW 43.88.090 are each amended to read as follows:

(1) For purposes of developing budget proposals to the legislature, the governor shall have the power, and it shall be the governor's duty, to require from proper agency officials such detailed estimates and other information in such form and at such times as the governor shall direct. The estimates for the legislature and the judiciary shall be transmitted to the governor and shall be included in the budget without revision. The estimates for state pension contributions shall be based on the rates provided in sections 1 through 9 of this act. Copies of all such estimates shall be transmitted to the standing committees on ways and means of the house and senate at the same time as they are filed with the governor and the office of financial management.

(2) Estimates from each agency shall include goals and objectives for each program administered by the agency. The goals and objectives shall, whenever possible, be stated in terms of objective measurable results. The estimates shall include statements or tables which indicate, by agency, the state funds which are required for the receipt of federal matching revenues.

The estimates shall be revised as necessary to reflect legislative enactments and adopted appropriations and shall be included with the initial biennial allotment submitted under RCW 43.88.110.

(3) In the year of the gubernatorial election, the governor shall invite the governor-elect or the governor-elect's designee to attend all hearings provided in RCW 43.88.100; and the governor shall furnish the governor-elect or the governor-elect's designee with such information as will enable the governor-elect or the governor-elect's designee to gain an understanding of the state's budget requirements. The governor-elect or the governor-elect's designee may ask such questions during the hearings and require such information as the governor-elect or the governor-elect's designee deems necessary and may make recommendations in connection with any item of the budget which, with the governor-elect's reasons therefor, shall be presented to the legislature in writing with the budget document. Copies of all such estimates and other required information shall also be submitted to the standing committees on ways and means of the house and senate.

Sec. 27. Section 17, chapter 274, Laws of 1947 as last amended by section 4, chapter 155, Laws of 1965 and RCW 41.40.160 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all his membership service and, if he is an original member, all of his certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW 41.40.361 and 41.40.370 for an employer admitted after April 1, 1949.

Sec. 28. Section 1, chapter 75, Laws of 1971 and RCW 41.40.405 are each amended to read as follows:

(1) On and after January 1, 1972, every city and town then participating in the state-wide city employees' retirement system under the provisions

of chapter 41.44 RCW shall be an employer under this chapter and every person employed thereby on or after January 1, 1972, who is eligible for membership under RCW 41.40.120, exclusive of subsection (4) thereof, shall be a member of the Washington public employees' retirement system to the exclusion of any pension system existing under any prior law and participate on the same basis as a person who first becomes a member through the admission of any employer under RCW 41.40.410 on and after April 1, 1949. Each such city and town becoming an employer under the meaning of this chapter shall make contributions to the funds of the Washington public employees' retirement system as provided in RCW 41.40.080(~~(, 41.40.361 excluding subsection (5) thereof,)~~) and ((RCW)) 41.40.370 and its employees becoming members of the Washington public employees' retirement system shall thereafter contribute to the employees' savings fund at the rate established under the provisions of RCW 41.40.330.

(2) After June 10, 1971, no additional cities or towns shall be eligible to elect to become participants in the state-wide city employees' retirement system provided for in chapter 41.44 RCW.

Sec. 29. Section 57, chapter 80, Laws of 1947 as last amended by section 1, chapter 237, Laws of 1986 and RCW 41.32.570 are each amended to read as follows:

(1) Any retired teacher who enters service in any public educational institution in Washington state shall cease to receive pension payments while engaged in such service: PROVIDED, That service may be rendered up to seventy-five days per school year without reduction of pension.

(2) Subsection (1) of this section shall apply to all persons governed by the provisions of ((RCW 41.32.005)) plan I, regardless of the date of their retirement, but shall apply only to benefits payable after June 11, 1986.

NEW SECTION. Sec. 30. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 78, Laws of 1949, section 86, chapter 3, Laws of 1983 and RCW 41.04.040;

(2) Section 2, chapter 78, Laws of 1949, section 87, chapter 3, Laws of 1983 and RCW 41.04.050;

(3) Section 2, chapter 105, Laws of 1975-'76 2nd ex. sess. and RCW 41.04.280;

(4) Section 11, chapter 80, Laws of 1947 and RCW 41.32.110;

(5) Section 10, chapter 189, Laws of 1973 1st ex. sess. and RCW 41.32.4982;

(6) Section 1, chapter 85, Laws of 1975-'76 2nd ex. sess. and RCW 41.32.4983;

(7) Section 7, chapter 274, Laws of 1947, section 4, chapter 291, Laws of 1961 and RCW 41.40.065;

(8) Section 15, chapter 80, Laws of 1947 and RCW 41.32.150;

(9) Section 43.43.200, chapter 8, Laws of 1965 and RCW 43.43.200;

(10) Section 1, chapter 306, Laws of 1986 and RCW 43.88.085; and

(11) Section 33, chapter 7, Laws of 1983, section 57, chapter 3, Laws of 1983 2nd ex. sess., section 607, chapter 285, Laws of 1984, section 85, chapter 57, Laws of 1985, section 8, chapter 502, Laws of 1987 and RCW 82.32.400.

NEW SECTION. Sec. 31. Sections 1 through 9 of this act shall constitute a new chapter in Title 41 RCW.

NEW SECTION. Sec. 32. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 33. (1) Sections 1 through 12, 14 through 16, 19 through 21, 24, 26, and 29 through 32 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 13, 17, 18, 22, 23, 25, 27 and 28 shall take effect September 1, 1990.

Passed the Senate April 11, 1989.

Passed the House April 6, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 274

[House Bill No. 2167]

MOBILE HOME PARKS—REVIEW OF NEED FOR

AN ACT Relating to sites for mobile home parks; adding a new section to chapter 35.63 RCW; adding a new section to chapter 35.22 RCW; adding a new section to chapter 35A.63 RCW; adding a new section to chapter 36.32 RCW; adding a new section to chapter 36.70 RCW; adding a new section to chapter 43.63A RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that mobile home parks are an important part of housing in Washington state. Mobile homes allow many citizens to own a home who otherwise would not. Mobile home parks provide a place to locate mobile homes, and therefore, can be a source of affordable housing. Mobile home parks also provide community living opportunities which can enable senior citizens to live independently for as long as possible.

(2) The legislature also finds that local siting and zoning regulations for mobile home parks and land use decisions by some local jurisdictions prohibit or hinder the establishment or expansion of mobile home parks. In areas where mobile home parks are closing, such decisions increase the

problem for tenants due to a lack of available spaces on which to move a mobile home.

(3) The purpose of this act is to encourage local jurisdictions to review their land use regulations and permit procedures pertaining to mobile home parks and to encourage the establishment or expansion of mobile home parks.

NEW SECTION. Sec. 2. A new section is added to chapter 35.63 RCW to read as follows:

Any city with a population of ten thousand or more or any county with a population of one hundred fifty thousand or more shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990.

NEW SECTION. Sec. 3. A new section is added to chapter 35A.63 RCW to read as follows:

Each municipality with a population of ten thousand or more shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990.

NEW SECTION. Sec. 4. A new section is added to chapter 36.70 RCW to read as follows:

Each county with a population of one hundred fifty thousand or more shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990.

NEW SECTION. Sec. 5. A new section is added to chapter 35.22 RCW to read as follows:

If a first class city zones under its inherent charter authority and not under chapter 35.63 RCW, then each first class city shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990.

NEW SECTION. Sec. 6. A new section is added to chapter 36.32 RCW to read as follows:

If a county operating under home rule charter zones under its inherent charter authority and not under chapter 35.63 RCW, nor chapter 36.70 RCW, the county shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the

findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990.

NEW SECTION. Sec. 7. A new section is added to chapter 43.63A RCW to read as follows:

The department of community development shall: (1) Report to the housing committee in the house of representatives and the economic development and labor committee in the senate the results of the local reviews provided for in sections 2 through 6 of this act by July 31, 1990; and (2) develop, in consultation with the Washington association of counties, the association of Washington cities, the Washington mobile park owners association, and the mobile home tenants association of Washington, a model ordinance for the siting of mobile home parks. The model ordinance shall be completed by January 31, 1990.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 21, 1989.

Passed the Senate April 21, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 275

[House Bill No. 1020]

DISTRICT COURT EMPLOYEES—COLLECTIVE BARGAINING

AN ACT Relating to collective bargaining for district court employees; and amending RCW 41.56.020 and 41.56.030.

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

Sec. 1. Section 2, chapter 108, Laws of 1967 ex. sess. as last amended by section 1, chapter 135, Laws of 1987 and RCW 41.56.020 are each amended to read as follows:

This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. The Washington state patrol shall be considered a public employer of state patrol officers appointed under RCW 43.43.020.

Sec. 2. Section 3, chapter 108, Laws of 1967 ex. sess. as last amended by section 2, chapter 135, Laws of 1987 and RCW 41.56.030 are each amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56.020, or any subdivision of such public body. For the purposes of this section, the public employer of district court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district judge or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.

(5) "Commission" means the public employment relations commission.

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

(7) "Uniformed personnel" means (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended, of cities with a population of fifteen thousand or more or law enforcement officers employed by

the governing body of any county of the second class or larger, or (b) fire fighters as that term is defined in RCW 41.26.030, as now or hereafter amended.

Passed the House April 17, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 276

[House Bill No. 1070]

CONVICTED CRIMINAL DEFENDANTS—RELEASE DURING STAY OF EXECUTION ON APPEAL OR WHILE AWAITING SENTENCE

AN ACT Relating to criminal procedure; amending RCW 9.95.062; adding a new section to chapter 9.95 RCW; adding new sections to chapter 10.64 RCW; and adding a new section to chapter 10.82 RCW.

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

Sec. 1. Section 2, chapter 42, Laws of 1955 as last amended by section 1, chapter 4, Laws of 1969 ex. sess. and RCW 9.95.062 are each amended to read as follows:

(1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

(2) In case the defendant has been convicted of a felony, and has been unable to ((furnish a bail bond)) obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time ((he)) the defendant has been imprisoned pending the appeal shall be deducted from the term for which ((he)) the defendant was ((theretofore)) sentenced ((to the penitentiary)), if the judgment ((against him be)) is affirmed.

NEW SECTION. Sec. 2. A new section is added to chapter 10.64 RCW to read as follows:

A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the

safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

NEW SECTION. Sec. 3. A new section is added to chapter 10.82 RCW to read as follows:

Financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments.

NEW SECTION. Sec. 4. A new section is added to chapter 9.95 RCW to read as follows:

In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under section 1 of this act regarding the whereabouts of the defendant, contact with the victim, or other conditions.

NEW SECTION. Sec. 5. A new section is added to chapter 10.64 RCW to read as follows:

In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under section 2 of this act regarding the whereabouts of the defendant, contact with the victim, or other conditions.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 21, 1989.

Passed the Senate April 21, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 277

[House Bill No. 1631]

CONVENTION CENTER FACILITIES—SPECIAL ASSESSMENTS TO COVER FUNDING SHORTFALLS

AN ACT Relating to the use of local improvement districts by cities and towns to finance convention centers; and amending RCW 35.43.040.

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

Sec. 1. Section 35.43.040, chapter 7, Laws of 1965 as last amended by section 1, chapter 397, Laws of 1985 and RCW 35.43.040 are each amended to read as follows:

Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination

thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and subsewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public street-car line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including

passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities; ((and))

(17) Convention center facilities or structures in cities imposing a special excise tax pursuant to RCW 67.40.100(2). Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to RCW 67.28.180 and 67.40.100(2) are insufficient to fund the annual debt service for such facilities or structures, and may not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied; and

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs shall identify all the area of any lake or river which will be improved and shall include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property shall comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years.

Passed the House April 19, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 278

[House Bill No. 1698]

PRECINCT BOUNDARIES—LOCATION, CHANGES, AND MAPS

AN ACT Relating to precinct boundaries; amending RCW 29.04.050 and 29.04.140; and repealing RCW 29.04.130 and 29.04.135.

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

Sec. 1. Section 29.04.050, chapter 9, Laws of 1965 as amended by section 2, chapter 128, Laws of 1977 ex. sess. and RCW 29.04.050 are each amended to read as follows:

(1) Every voting precinct must be ~~((established so that it lies))~~ wholly within ~~((one senatorial or representative))~~ a single congressional district, a single legislative district, and ~~((wholly within one county commissioner))~~ a single district of a county legislative authority.

(2) Every voting precinct shall be composed, as nearly as practicable, of contiguous and compact areas.

(3) Except as provided in this subsection, changes to the boundaries of any precinct shall follow visible, physical features delineated on the most current maps provided by the United States census bureau. A change need not follow such visible, physical features if (a) it is necessitated by an annexation or incorporation and the proposed precinct boundary is identical to an exterior boundary of the annexed or incorporated area which does not follow a visible, physical feature; or (b) doing so would substantially impair election administration in the involved area.

(4) After a change to precinct boundaries is adopted by the county legislative authority, the county auditor shall send to the secretary of state a copy of the legal description and a map or maps of the changes and, if all or part of the changes do not follow visible, physical features, a statement of the applicable exception under subsection (3) of this section. For boundary changes made pursuant to subsection (3)(b) of this section, the auditor shall include a statement of the reasons why following visible, physical features would have substantially impaired election administration.

(5) Every voting precinct within each county shall be designated consecutively by number for the purpose of preparation of maps and the tabulation of population for apportionment purposes. ~~((The county auditor may name))~~ These precincts ((as he deems necessary)) may be identified with names or other numbers for other election purposes.

(6) After a change to precinct boundaries in a city or town, the county auditor shall send one copy of the map or maps delineating the new precinct boundaries within that city or town to the city or town clerk.

(7) Precinct maps are public records and shall be available for inspection by the public during normal office hours in the offices where they are kept. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction.

Sec. 2. Section 2, chapter 129, Laws of 1975-'76 2nd ex. sess. as amended by section 4, chapter 128, Laws of 1977 ex. sess. and RCW 29.04.140 are each amended to read as follows:

(1) With regard to functions relating to census, apportionment, and the establishment of legislative and congressional districts, the secretary of state shall:

(a) ~~((Promulgate))~~ Adopt rules pursuant to chapter ~~((34.04))~~ 34.05 RCW governing the preparation, maintenance, distribution, review, and filing of precinct maps ~~((and census correspondence lists prepared pursuant to))~~ under RCW ~~((29.04.130 as now or hereafter amended))~~ 29.04.050;

(b) Coordinate and monitor precinct mapping functions of the county auditors and county engineers;

(c) Maintain official state base maps and correspondence lists and maintain an index of all such maps and lists;

(d) Furnish to the United States bureau of the census as needed for the decennial census of population, current, accurate, and easily readable versions of maps of all counties, cities, towns, and other areas of this state, which indicate current precinct boundaries together with copies of the census correspondence lists.

(2) The secretary of state shall serve as the state liaison with the United States bureau of census on matters relating to the preparation of maps and the tabulation of population for apportionment purposes.

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

(1) Section 1, chapter 129, Laws of 1975-'76 2nd ex. sess., section 3, chapter 128, Laws of 1977 ex. sess., section 1, chapter 107, Laws of 1980 and RCW 29.04.130; and

(2) Section 2, chapter 107, Laws of 1980 and RCW 29.04.135.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 279

[Substitute House Bill No. 1553]

WASHINGTON ECONOMIC DEVELOPMENT FINANCE AUTHORITY

AN ACT Relating to the creation of the Washington economic development finance authority; amending RCW 42.17.2401; reenacting and amending RCW 42.17.310; creating a new chapter in Title 43 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. Economic development is essential to the health, safety, and welfare of all Washington citizens by broadening and strengthening state and local tax bases, providing meaningful employment opportunities and thereby enhancing the quality of life. Economic development increasingly is dependent upon the ability of small-sized and medium-sized businesses and farms to finance growth and trade activities. Many of these businesses face an unmet need for capital that limits their growth. These unmet capital needs are a problem in both urban and rural areas which cannot be solved by the private sector alone. There presently exist some federal programs, private credit enhancements and other financial tools to complement the private banking industry in providing this needed capital. More research is needed to develop effective strategies to enhance access to capital and thereby stimulate economic development.

It is the purpose of this chapter to establish a state economic development finance authority to act as a financial conduit that, without using

public funds or lending the credit of the state or local governments, can issue nonrecourse revenue bonds, and participate in federal, state, and local economic development programs to help facilitate access to needed capital by Washington businesses that cannot otherwise readily obtain needed capital on terms and rates comparable to large corporations, and can help local governments obtain capital more efficiently. It is also a primary purpose of this chapter to encourage the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to the problem of unmet capital needs. This chapter is enacted to accomplish these and related purposes and shall be construed liberally to carry out its purposes and objectives.

NEW SECTION. Sec. 2. As used in this chapter, the following words and terms have the following meanings, unless the context requires otherwise:

(1) "Authority" means the Washington economic development finance authority created under section 3 of this act or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law;

(2) "Bonds" means any bonds, notes, debentures, interim certificates, conditional sales or lease financing agreements, lines of credit, forward purchase agreements, investment agreements, and other banking or financial arrangements, guaranties, or other obligations issued by or entered into by the authority. Such bonds may be issued on either a tax-exempt or taxable basis;

(3) "Borrower" means one or more public or private persons or entities acting as lessee, purchaser, mortgagor, or borrower who has obtained or is seeking to obtain financing either from the authority or from an eligible banking organization that has obtained or is seeking to obtain funds from the authority to finance a project. A borrower may include a party who transfers the right of use and occupancy to another party by lease, sublease or otherwise, or a party who is seeking or has obtained a financial guaranty from the authority;

(4) "Eligible banking organization" means any organization subject to regulation by the state supervisor of banking or the state supervisor of savings and loans, any national bank, federal savings and loan association, and federal credit union located within this state;

(5) "Eligible export transaction" means any preexport or export activity by a person or entity located in the state of Washington involving a sale for export and product sale which, in the judgment of the authority: (a) Will create or maintain employment in the state of Washington, (b) will obtain a material percent of its value from manufactured goods or services made, processed or occurring in Washington, and (c) could not otherwise obtain financing on reasonable terms from an eligible banking organization;

(6) "Eligible farmer" means any person who is a resident of the state of Washington and whose specific acreage qualifying for receipts from the federal department of agriculture under its conservation reserve program is within the state of Washington;

(7) "Financing document" means an instrument executed by the authority and one or more persons or entities pertaining to the issuance of or security for bonds, or the application of the proceeds of bonds or other funds of, or payable to, the authority. A financing document may include, but need not be limited to, a lease, installment sale agreement, conditional sale agreement, mortgage, loan agreement, trust agreement or indenture, security agreement, letter or line of credit, reimbursement agreement, insurance policy, guaranty agreement, or currency or interest rate swap agreement. A financing document also may be an agreement between the authority and an eligible banking organization which has agreed to make a loan to a borrower;

(8) "Plan" means the general plan of economic development finance objectives developed and adopted by the authority, and updated from time to time, as required under section 10 of this act.

NEW SECTION. Sec. 3. The Washington economic development finance authority is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The authority is a public body within the meaning of RCW 39.53.010.

The authority shall consist of fifteen members as follows: The director of the department of trade and economic development, the director of the department of community development, the state treasurer, one member from each caucus in the house of representatives appointed by the speaker of the house, one member from each caucus in the senate appointed by the president of the senate, and eight public members with at least three of the members residing east of the Cascades. The public members shall be residents of the state appointed by the governor on the basis of their interest or expertise in trade, agriculture or business finance or jobs creation and development. One of the public members shall be appointed by the governor as chair of the authority and shall serve as chair of the authority at the pleasure of the governor. The authority may select from its membership such other officers as it deems appropriate.

The term of the persons appointed by the governor as public members of the authority, including the public member appointed as chair, shall be four years from the date of appointment, except that the term of three of the initial appointees shall be for two years from the date of appointment and the term of two of the initial appointees shall be for three years from the date of appointment. The governor shall designate the appointees who will serve the two-year and three-year terms.

In the event of a vacancy on the authority due to death, resignation or removal of one of the public members, or upon the expiration of the term of one of the public members, the governor shall appoint a successor for the remainder of the unexpired term. If either of the state offices is abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office.

Any public member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected public member.

The state officials serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Such designations shall be made in writing in such manner as is specified by the rules of the authority.

The members of the authority shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. The authority may borrow funds from the department for the first year of the authority's operations for the purpose of reimbursing members for expenses; however, the authority shall repay the department as soon as practicable.

A majority of the authority shall constitute a quorum.

NEW SECTION. Sec. 4. (1) The authority, in cooperation with the small business export finance assistance center and other export assistance entities, is authorized to develop and conduct a program or programs to provide for the funding of export transactions for small businesses which are unable to obtain funding from private commercial lenders.

(2) The authority is authorized to secure or provide guaranties or insurance for loans and otherwise to provide for loans for any eligible export transaction. Loans may be made either directly by the authority or through an eligible banking organization. For such purpose, the authority may use funds legally available to it to provide for insurance or to guarantee eligible export transactions for which guaranteed funding has been provided.

(3) The authority shall make every effort to cause guaranties or insurance to be provided from the export-import bank of the United States, the foreign credit insurance association, the small business administration or such other similar or succeeding federal or private programs whose financial performance in the guarantee or insurance of export transactions is sound and recognized in the financial community. The maximum amount payable under any guaranty shall be specifically set forth in writing at the time any such guaranteed funding is entered into by the authority.

(4) Prior to providing or securing a guarantee of funding or otherwise providing for a loan for any eligible export transaction hereunder, the authority shall obtain assurance that there has been made an investigation of the credit of the exporter in order to determine its viability, the economic benefits to be derived from the eligible export transaction, the prospects for repayment, and such other facts as it deems necessary in order to determine that such guaranteed funding is consistent with the purposes of this chapter.

NEW SECTION. Sec. 5. To provide capital for economic development purposes, the authority is authorized to develop and conduct a program or programs to provide advance financing to eligible farmers in respect of the contract payments due to them under the federal department of agriculture conservation reserve program. Such advance financing may be provided in the form of lease, sale, loan or other similar financing transactions.

NEW SECTION. Sec. 6. The authority is authorized to develop and conduct a program or programs to promote small business and agricultural financing in the state through the pooling of loans or portions of loans made or guaranteed through programs administered by the federal small business or farmers home administrations. For such purpose, the authority may acquire from eligible banking organizations and other financial intermediaries who make or hold loans made or guaranteed through programs administered by the federal small business or farmers home administrations all or portions of such loans.

NEW SECTION. Sec. 7. (1) The authority is authorized to participate fully in federal and other governmental economic development finance programs and to take such actions as are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of those programs and to meet their requirements.

(2) The authority shall coordinate its programs with those contributing to a common purpose found elsewhere in the departments of trade and economic development, community development, agriculture or employment security, or any other department or organization of, or affiliated with, the state or federal government, and shall avoid any duplication of such activities or programs provided elsewhere. The departments of trade and economic development, community development, agriculture, employment security and other relevant state agencies shall provide to the authority all reports prepared in the course of their ongoing activities which may assist in the identification of unmet capital financing needs by small-sized and medium-sized businesses in the state.

NEW SECTION. Sec. 8. The authority may use any funds legally available to it for any purpose specifically authorized by this chapter, or for otherwise improving economic development in this state by assisting businesses that do not have access to capital at terms and rates comparable to

large corporations due to the location of the business, the size of the business, the lack of financial expertise, or other appropriate reasons: PROVIDED, That no funds of the state shall be used for such purposes.

NEW SECTION. Sec. 9. (1) The authority is authorized to provide assistance and advice to persons forming corporations under chapter 31.24 RCW.

(2) The authority may contract with corporations organized under this chapter. Each contract shall specify that the money received under the contract shall be used to provide management assistance, which may include management and technical advice and services and other technical support, to businesses receiving financing from the contracting corporation. No more than five corporations may contract with the authority under this section at any time. No corporation may receive more than a total of two hundred fifty thousand dollars under this section.

(3) To qualify for a contract under this section, a corporation shall agree that at least one-half of the corporation's loans and investments will be to businesses operating in distressed areas as defined in RCW 43.165.010(3)(a) and that the corporation's loans and investments will be to businesses that have agreed to enter first-source hiring agreements with the employment security department, local private industry councils, local labor unions, or other employment or placement agencies. These agreements shall require the businesses to interview prospective employees from a list of the unemployed supplied by the employment or placement agencies and hire any qualified candidates on the list before hiring any candidates not on the list. The first-source hiring agreements shall require the business to:

- (a) Provide a job description for each position;
- (b) Provide a description of the skills each position requires; and
- (c) Provide a salary range for each position.

The first-source hiring agreements shall require the employment or placement agency to provide a list of candidates who have expressed interest in each available position and who meet the skill requirements of each position. No fees may be charged of the unemployed candidates on the list supplied by the employment or placement agency.

(4) The authority shall adopt rules to carry out this section.

(5) The authority shall adopt general operating procedures for the authority. The authority shall also adopt operating procedures for individual programs as they are developed for obtaining funds and for providing funds to borrowers. These operating procedures shall be adopted by resolution prior to the authority operating the applicable programs.

(6) The operating procedures shall include, but are not limited to: (a) Appropriate minimum reserve requirements to secure the authority's bonds and other obligations; (b) appropriate standards for securing loans and other financing the authority provides to borrowers, such as guarantees or collateral; and (c) appropriate standards for providing financing to borrowers,

such as (i) the borrower is a responsible party with a high probability of being able to repay the financing provided by the authority, (ii) the financing is reasonably expected to provide economic growth or stability in the state by enabling a borrower to increase or maintain jobs or capital in the state, (iii) the borrowers with the greatest needs or that provide the most public benefit are given higher priority by the authority, and (iv) the financing is consistent with any plan adopted by the authority under section 10 of this act.

NEW SECTION. Sec. 10. The authority shall adopt a general plan of economic development finance objectives to be implemented by the authority during the period of the plan. The authority may exercise the powers authorized under this chapter prior to the adoption of the initial plan. In developing the plan, the authority shall consider and set objectives for:

- (1) Employment generation associated with the authority's programs;
- (2) The application of funds to sectors and regions of the state economy evidencing need for improved access to capital markets and funding resources;
- (3) Geographic distribution of funds and programs available through the authority;
- (4) Eligibility criteria for participants in authority programs;
- (5) The use of funds and resources available from or through federal, state, local, and private sources and programs;
- (6) Standards for economic viability and growth opportunities of participants in authority programs;
- (7) New programs which serve a targeted need for financing assistance within the purposes of this chapter; and
- (8) Opportunities to improve capital access as evidenced by programs existent in other states or as they are made possible by results of private capital market circumstances.

At least one public hearing shall be conducted by the authority on the plan prior to its adoption. The plan shall be adopted by resolution of the authority no later than November 15, 1990. The plan shall be submitted to the chief clerk of the house of representatives and secretary of the senate for transmittal to and review by the appropriate standing committees no later than December 15, 1990. The authority shall periodically update the plan as determined necessary by the authority, but not less than once every two years. The plan or updated plan shall include a report on authority activities conducted since the commencement of authority operation or since the last plan was reported, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the plan.

NEW SECTION. Sec. 11. In addition to accomplishing the economic development finance programs specifically authorized in this chapter, the authority may:

- (1) Maintain an office or offices;
- (2) Sue and be sued in its own name, and plead and be impleaded;
- (3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (4) Make and execute all manner of contracts, agreements and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;
- (7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;
- (8) Procure such insurance in such amounts and from such insurers as the authority deems desirable, including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;
- (9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (10) Establish guidelines for the participation by eligible banking organizations in programs conducted by the authority under this chapter;
- (11) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;
- (12) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (13) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter: **PROVIDED**, That expenditures with respect to the economic development financing programs of the authority shall not be made from funds of the state: **PROVIDED FURTHER**, That after the first year of operation, administrative expenses shall not exceed five percent of total funds received by the authority in a fiscal year;

(14) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;

(15) Give assistance to public bodies by providing information, guidelines, forms, and procedures for implementing their financing programs;

(16) Prepare, publish and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;

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

(18) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(19) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

NEW SECTION. Sec. 12. Notwithstanding any other provision of this chapter, the authority shall not:

(1) Give any state money or property or loan any state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation;

(2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;

(3) Be or constitute a bank or trust company within the jurisdiction or under the control of the division of banking of the state, the comptroller of the currency of the United States of America or the treasury department thereof;

(4) Be or constitute a bank, broker or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange or securities dealers' law of the United States of America or the state;

(5) Engage in the financing of housing as provided for in chapter 43.180 RCW;

(6) Engage in the financing of health care facilities as provided for in chapter 70.37 RCW; or

(7) Engage in financing higher education facilities as provided for in chapter 28B.07 RCW.

NEW SECTION. Sec. 13. The authority shall receive no appropriation of state funds. The department of trade and economic development shall provide staff to the authority, to the extent permitted by law, to enable the authority to accomplish its purposes; the staff from the department of

trade and economic development may assist the authority in organizing itself and in designing programs, but shall not be involved in the issuance of bonds or in making credit decisions regarding financing provided to borrowers by the authority. The authority shall report each December on its activities to the house trade and economic development committee and to the senate economic development and labor committee.

NEW SECTION. Sec. 14. (1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds shall be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority shall create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9 of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds or any other type of bond instrument consistent with the provisions of this chapter. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondowners.

(10) The authority shall not exceed two hundred fifty million dollars in total outstanding debt at any time.

(11) The state finance committee shall be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets.

NEW SECTION. Sec. 15. (1) Bonds issued by the authority under this chapter shall not be deemed to constitute obligations, either general, special or moral, of the state or of any political subdivision of the state, or pledge of the faith and credit of the state or of any political subdivision, or general obligations of the authority. The bonds shall be special obligations of the authority and shall be payable solely from the special fund or funds created by the authority for their repayment. The issuance of bonds under this chapter shall not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds. The substance of the limitations included in this paragraph shall be plainly printed, written, engraved, or reproduced on each bond and in any disclosure document prepared in conjunction with the offer and sale of bonds.

(2) Neither the proceeds of bonds issued under this chapter nor any money used or to be used to pay the principal of, premium, if any, or interest on the bonds shall constitute public money or property. All of such money shall be kept segregated and set apart from funds of the state and any political subdivision of the state and shall not be subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW.

(3) Contracts entered into by the authority shall be entered into in the name of the authority and not in the name of the state. The obligations of the authority under such contracts shall be obligations only of the authority and shall not, in any way, constitute obligations of the state.

NEW SECTION. Sec. 16. The authority may enter into financing documents with borrowers regarding bonds issued by the authority that may provide for the payment by each borrower of amounts sufficient, together with other revenues available to the authority, if any, to: (1) Pay the borrower's share of the fees established by the authority; (2) pay the principal of, premium, if any, and interest on outstanding bonds of the authority issued in respect of such borrower as the same shall become due and payable; and (3) create and maintain reserves required or provided for by the authority in connection with the issuance of such bonds. The payments shall not be subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state other than the authority.

NEW SECTION. Sec. 17. All money received by or on behalf of the authority with respect to this issuance of its bonds shall be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into trust agreement or

indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

(1) Perform all of any part of the obligations of the authority with respect to: (a) Bonds issued by it; (b) the receipt, investment and application of the proceeds of the bonds and money paid by a participant or available from other sources for the payment of the bonds; (c) the enforcement of the obligations of a borrower in connection with the financing or refinancing of any project; and (d) other matters relating to the exercise of the authority's powers under this chapter;

(2) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(3) Act on behalf of the authority or the owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due.

NEW SECTION. Sec. 18. Any owner of bonds of the authority issued under this chapter, and the trustee under any trust agreement or indenture, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder, except to the extent the rights given are restricted by the authority in any bond resolution or trust agreement or indenture authorizing the issuance of the bonds.

NEW SECTION. Sec. 19. The bonds of the authority are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations and political subdivisions, all banks, eligible banking organizations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control.

NEW SECTION. Sec. 20. This chapter provides a complete, additional and alternative method for accomplishing the purposes of this chapter and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds.

NEW SECTION. Sec. 21. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter are controlling.

Sec. 22. Section 2, chapter 34, Laws of 1984 as last amended by section 13, chapter 36, Laws of 1988 and RCW 42.17.2401 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of financial management, the director of personnel, the director of community development, the director of the state system of community colleges, the director of the department of information services, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of the higher education personnel board, the secretary of transportation, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the administrator of the interagency committee for outdoor recreation, the director of parks and recreation, the executive secretary of the ~~((board of prison terms and paroles))~~ indeterminate sentence review board, the administrator of the public disclosure commission, the director of retirement systems, the secretary of the utilities and transportation commission, the executive secretary of the board of tax appeals, the secretary of the state finance committee, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Each member of the state board for community college education, information services board, forest practices board, forest practices appeals board, gambling commission, wildlife commission, higher education personnel board, transportation commission, horse racing commission, human rights commission, board of industrial insurance appeals, liquor control board, interagency committee for outdoor recreation, parks and recreation commission, personnel board, personnel appeals board, ~~((board of prison terms and paroles))~~ indeterminate sentence review board, public disclosure commission, public employees' retirement system board, public pension commission, University of Washington board of regents, Washington State University board of regents, board of tax appeals, teachers' retirement system board of trustees, Central Washington University board of trustees, Eastern Washington University board of trustees, The Evergreen State College board of trustees, Western Washington University board of trustees, board of trustees of each community college, state housing finance commission, Washington economic development finance authority, and the utilities and transportation commission.

Sec. 23. Section 2, chapter 107, Laws of 1987, section 1, chapter 337, Laws of 1987, section 16, chapter 370, Laws of 1987, section 1, chapter

404, Laws of 1987, section 10, chapter 411, Laws of 1987 and RCW 42-17.310 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: PROVIDED, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: PROVIDED, FURTHER, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

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

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.— RCW (sections 1 through 21 of this act) and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.— RCW (sections 1 through 21 of this act) and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) (~~Except as provided under section 2 of this 1987 act [1987 c 404 § 2];~~) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

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

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 24. The legislative budget committee shall conduct a program and fiscal review of the Washington economic development financial authority. The final report shall be completed by December 1, 1992.

NEW SECTION. Sec. 25. Sections 1 through 21 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 26. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 17, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 280

[Senate Bill No. 5167]

CAMPAIGN FINANCING—REPORTING REQUIREMENTS

AN ACT Relating to campaign finance reporting; amending RCW 42.17.020, 42.17.040, 42.17.050, 42.17.060, 42.17.065, 42.17.067, 42.17.070, 42.17.080, 42.17.100, 42.17.105, 42.17.125, and 42.17.135; reenacting and amending RCW 42.17.090; and providing an effective date.

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

Sec. 1. Section 2, chapter 1, Laws of 1973 as last amended by section 5, chapter 34, Laws of 1984 and RCW 42.17.020 are each amended to read as follows:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(3) "~~((Campaign))~~ Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(4) "~~((Campaign))~~ Treasurer" and "deputy ~~((campaign))~~ treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(b) Announces publicly or files for office.

(6) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(7) "Commission" means the agency established under RCW 42.17.350.

(8) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42-17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(9) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(10) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services for less than full consideration, but does not include interest on moneys deposited in a political committee's account, ordinary home hospitality and the rendering of (~~"part-time"~~) personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of (~~twenty-five~~) fifty dollars personally paid for by the worker. (~~"Part-time"~~) Volunteer services, for the purposes of this chapter, means services (~~(in addition to regular full-time employment, or, in the case of an unemployed person, services not in excess of twenty hours per week, excluding weekends)~~) or labor for which the individual is not compensated by any person. For the purposes of this chapter, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this chapter, by the actual cost of consumables furnished in connection with the purchase of the tickets, and only the excess over the actual cost of the consumables shall be deemed a contribution.

(11) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(12) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(13) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(14) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported (~~(, or payment of service charges against a political committee's campaign account)~~).

(15) "Final report" means the report described as a final report in RCW 42.17.080(2).

(16) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household.

(17) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(18) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act(s), chapter ~~((34.04))~~ 34.05 RCW ~~((and chapter 28B.19 REW))~~.

(19) "Lobbyist" includes any person who lobbies either in his own or another's behalf.

(20) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist.

(21) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(22) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(23) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(24) "Political committee" means any person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(25) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(26) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(27) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(28) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires.

Sec. 2. Section 4, chapter 1, Laws of 1973 as last amended by section 1, chapter 147, Laws of 1982 and RCW 42.17.040 are each amended to read as follows:

(1) Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor or elections officer of the county in which the candidate resides ((f)), or in the case of ((a)) any other political committee ((supporting or opposing a ballot proposition)), the county in which the ((campaign)) treasurer resides((g)). A political committee organized

within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

- (2) The statement of organization shall include but not be limited to:
- (a) The name and address of the committee;
 - (b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;
 - (c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;
 - (d) The name and address of its ((campaign)) treasurer and ((campaign)) depository;
 - (e) A statement whether the committee is a continuing one;
 - (f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;
 - (g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;
 - (h) What distribution of surplus funds will be made, in accordance with RCW 42.17.095, in the event of dissolution;
 - (i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW ((42.17.065 and)) 42.17.080((~~as now or hereafter amended~~)); and
 - (j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter.
- (3) Any material change in information previously submitted in a statement of organization shall be reported to the commission and to the appropriate county elections officer within the ten days following the change.

Sec. 3. Section 5, chapter 1, Laws of 1973 as last amended by section 3, chapter 367, Laws of 1985 and RCW 42.17.050 are each amended to read as follows:

- (1) Each candidate, within two weeks after becoming a candidate, and each political committee, at the time it is required to file a statement of organization, shall designate and file with the commission and the appropriate county elections officer the names and addresses of:
- (a) One legally competent individual, who may be the candidate, to serve as a ((campaign)) treasurer; and
 - (b) A bank, mutual savings bank, savings and loan association, or credit union doing business in this state to serve as ((campaign)) depository and the name of the account or accounts ((~~therein~~)) maintained in it.

(2) A candidate, a political committee, or a ((campaign)) treasurer may appoint as many deputy ((campaign)) treasurers as is considered necessary and may designate not more than one additional ((campaign)) depository in each other county in which the campaign is conducted. The candidate or political committee shall file the names and addresses of the deputy ((campaign)) treasurers and additional ((campaign)) depositories with the commission and the appropriate county elections officer.

(3) A candidate may not knowingly establish, use, direct, or control more than one political committee for the purpose of supporting that candidate during a particular election campaign. This does not prohibit: (a) In addition to a candidate's having his or her own political committee, the candidate's participation in a political committee established to support a slate of candidates which includes the candidate; or (b) joint fund-raising efforts by candidates when a separate political committee is established for that purpose and all contributions are disbursed to and accounted for on a pro rata basis by the benefiting candidates.

(4) (a) A candidate or political committee may at any time remove a ((campaign)) treasurer or deputy ((campaign)) treasurer or change a designated ((campaign)) depository.

(b) In the event of the death, resignation, removal, or change of a ((campaign)) treasurer, deputy ((campaign)) treasurer, or depository, the candidate or political committee shall designate and file with the commission and the appropriate county elections officer the name and address of any successor.

(5) No ((campaign)) treasurer, deputy ((campaign)) treasurer, or ((campaign)) depository may be deemed to be in compliance with the provisions of this chapter until his name and address is filed with the commission and the appropriate county elections officer.

Sec. 4. Section 6, chapter 1, Laws of 1973 as last amended by section 1, chapter 268, Laws of 1987 and RCW 42.17.060 are each amended to read as follows:

(1) All monetary contributions received by a candidate or political committee shall be deposited by the ((campaign)) treasurer or deputy treasurer in a ((campaign)) depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution.

(2) Political committees which support or oppose more than one candidate or ballot proposition, or exist for more than one purpose, may maintain multiple separate bank accounts within the same designated depository for such purpose: PROVIDED, That each such account shall bear the same name followed by an appropriate designation which accurately identifies its separate purpose: AND PROVIDED FURTHER, That transfers of funds which must be reported under RCW 42.17.090(1)(d)((~~as now or hereafter amended;~~)) may not be made from more than one such account.

(3) Nothing in this section prohibits a candidate or political committee from investing funds on hand in a ((campaign)) depository in bonds, certificates, tax-exempt securities, or savings accounts or other similar instruments in financial institutions or mutual funds other than the ((campaign)) depository: PROVIDED, That the commission and the appropriate county elections officer is notified in writing of the initiation and the termination of the investment: PROVIDED FURTHER, That the principal of such investment when terminated together with all interest, dividends, and income derived from the investment are deposited in the ((campaign)) depository in the account from which the investment was made and properly reported to the commission and the appropriate county elections officer prior to any further disposition or expenditure thereof.

(4) Accumulated unidentified contributions, other than those made by persons whose names must be maintained on a separate and private list by a political committee's ((campaign)) treasurer pursuant to RCW 42.17.090(1)(b), which total in excess of one percent of the total accumulated contributions received in the current calendar year or three hundred dollars (whichever is more), may not be deposited, used, or expended, but shall be returned to the donor, if his identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state, and shall be paid to the state treasurer for deposit in the state general fund.

(5) A contribution of more than fifty dollars in currency may not be accepted unless a receipt, signed by the contributor and by the candidate, ((campaign)) treasurer, or deputy ((campaign)) treasurer, is prepared and made a part of the campaign's or political committee's financial records.

Sec. 5. Section 5, chapter 294, Laws of 1975 1st ex. sess. as amended by section 4, chapter 147, Laws of 1982 and RCW 42.17.065 are each amended to read as follows:

(1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17.040, 42.17.050, and 42.17.060 ((as now or hereafter amended)).

(2) A continuing political committee shall file with the commission and the auditor or elections officer of the county in which the committee maintains its office or headquarters and if there is no such office or headquarters then in the county in which the committee treasurer resides a report on the tenth day of the month detailing its activities for the preceding calendar month in which the committee has received a contribution or made an expenditure: PROVIDED, That such report shall only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17.090 ((as now or hereafter amended));

(b) Each expenditure made to retire previously accumulated debts of the committee; identified by recipient, amount, and date of payments;

(c) Such other information as the commission shall by rule prescribe.

(3) If a continuing political committee shall make a contribution in support of or in opposition to a candidate or ballot proposition within sixty days prior to the date on which such candidate or ballot proposition will be voted upon, such continuing political committee shall report pursuant to RCW 42.17.080(~~(, as now or hereafter amended, until twenty-one days after said election)~~).

(4) A continuing political committee shall file reports as required by this chapter until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the campaign treasurer shall cease and there shall be no obligation to make any further reports.

(5) The campaign treasurer shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of any election, for which the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040 (~~(as now or hereafter amended)~~), at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer or such other place as may be authorized by the commission.

(6) All reports filed pursuant to this section shall be certified as correct by the campaign treasurer.

(7) The campaign treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

Sec. 6. Section 9, chapter 112, Laws of 1975-'76 2nd ex. sess. as amended by section 5, chapter 147, Laws of 1982 and RCW 42.17.067 are each amended to read as follows:

(1) Fund-raising activities which meet the standards of subsection (2) of this section may be reported in accordance with the provisions of this section in lieu of reporting in accordance with RCW 42.17.080(~~((3) as now or hereafter amended)~~).

(2) (~~(A fund-raising activity which is to be reported in accordance with the provisions of this section shall conform with the following)~~)
Standards:

(a) The ((income resulting from the conduct of the)) activity ((is derived solely from either)) consists of one or more of the following:

(i) The retail sale of goods or services at ((prices which in no case exceed)) a reasonable approximation of the fair market value of each item or service sold at the activity(;;); or

(ii) A gambling operation which is licensed, conducted, or operated in accordance with the provisions of chapter 9.46 RCW ((and at which in no case is the monetary value of any prize exceeded by the monetary value of any single wager which may be made by a person participating in such activity)); or

(iii) A gathering where food and beverages are purchased, where the price of admission or the food and beverages is no more than twenty-five dollars; or

(iv) A concert, dance, theater performance, or similar entertainment event where the price of admission is no more than twenty-five dollars; or

(v) An auction or similar sale where the total fair market value of items donated by any person for sale is no more than fifty dollars; and

(b) No person responsible for receiving money at such activity ((may)) knowingly accepts payments from a single person ((which would result in a profit)) at or from such an activity to the candidate or committee ((of twenty-five)) aggregating more than fifty dollars ((or more)) unless the name and address of the person making such payment together with the ((approximate)) amount ((of profit)) paid to the candidate or committee ((resulting from such payment)) are disclosed in the report filed pursuant to subsection ((4)) (6) of this section; and

(c) Such other standards as shall be established by rule ((and regulation)) of the commission to prevent frustration of the purposes of this chapter.

(3) All funds ((obtained through the use of)) received from a fund-raising activity which conforms with ((the provisions of)) subsection (2) of this section shall be deposited within five business days of receipt by the ((campaign)) treasurer or deputy ((campaign)) treasurer in the ((same account into which contributions received by the committee are being deposited pursuant to RCW 42.17.060)) depository.

(4) At the time ((such funds are deposited in accordance with subsection (3) of this section)) reports are required under RCW 42.17.080, the ((campaign)) treasurer or deputy ((campaign)) treasurer making the deposit shall file with the commission and the appropriate county elections officer a report of the fund-raising activity which shall contain the following information:

(a) The date ((on which)) of the activity ((occurred));

(b) ((The location at which the activity occurred;

(c)) A precise description of the fund-raising methods used in the activity; and

((d)) A financial statement noting gross receipts and expenses for the activity, including an inventory list where appropriate;

~~(e) The monetary value of wagers made and prizes distributed for winning wagers, where appropriate;~~

~~(f) The name and address of each person who contributed goods or services to the committee for sale at the activity if the fair market value of the goods or services contributed equals twenty-five dollars or more in the aggregate from such person, together with a precise description of each item or service contributed and its estimated market value;~~

~~(g) The name and address of each person whose identity can be ascertained and who makes payments to the committee at such activity which result in a profit of twenty-five dollars or more to the committee, together with the approximate amount of profit to the committee which results from such payments; and~~

~~(h) A complete listing of the names and addresses of the persons responsible for conducting the activity.~~

~~(5) The statement required by subsection (4) of this section shall be in duplicate upon a form prescribed by the commission, one copy to be filed by the campaign treasurer with the commission, and one copy to be retained by him for his records. Each statement shall be certified as correct by the campaign)) (c) The total amount of cash receipts from persons, each of whom paid no more than fifty dollars.~~

~~(5) The treasurer or deputy treasurer ((making the deposit)) shall certify the report is correct.~~

~~(6) The treasurer shall report pursuant to RCW 42.17.080 and 42.17.090: (a) The name and address and the amount contributed of each person who contributes goods or services with a fair market value of more than fifty dollars to a fund-raising activity reported under subsection (4) of this section, and (b) the name and address of each person whose identity can be ascertained, and the amount paid, from whom were knowingly received payments to the candidate or committee aggregating more than fifty dollars at or from such a fund-raising activity.~~

Sec. 7. Section 7, chapter 1, Laws of 1973 as amended by section 5, chapter 367, Laws of 1985 and RCW 42.17.070 are each amended to read as follows:

No expenditures may be made or incurred by any candidate or political committee except on the authority of the ((campaign)) treasurer or the candidate, and a record of all such expenditures shall be maintained by the ((campaign)) treasurer.

No expenditure of more than fifty dollars may be made in currency unless a receipt, signed by the recipient and by the candidate or ((campaign)) treasurer, is prepared and made a part of the campaign's or political committee's financial records.

Sec. 8. Section 8, chapter 1, Laws of 1973 as last amended by section 1, chapter 28, Laws of 1986 and RCW 42.17.080 are each amended to read as follows:

(1) On the day the ((campaign)) treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides ((f)), or in the case of a political committee ((supporting or opposing a ballot proposition)), the county in which the ((campaign)) treasurer resides((t)), in addition to any statement of organization required under RCW 42.17.040 or 42.17.050 ((as now or hereafter amended)), a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each ((campaign)) treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides ((f)), or in the case of a political committee ((supporting or opposing a ballot proposition)), the county in which the ((campaign)) committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the ((campaign)) treasurer resides((t)), a report containing the information required by RCW 42.17.090 ((as now or hereafter amended)):

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) ~~((Within twenty-one days after the date of))~~ On the tenth day of the first month after the election: PROVIDED, That this report shall not be required following a primary election from:

(i) A candidate whose name will appear on the subsequent general election ballot; or

(ii) Any continuing political committee; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the ((campaign)) treasurer shall file a final report. Upon submitting a final report, the duties of the ((campaign)) treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, the ((campaign)) treasurer shall file with the commission and the appropriate county elections officer a report of each contribution received during that period at the time that contribution is deposited pursuant to RCW 42.17.060(1)((, as now or hereafter amended)). The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person(~~(-PROVIDED; That)).~~ However, contributions of ((less than [than])) no more than twenty-five dollars from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the ((campaign)) treasurer for his records. In the event of deposits made by a deputy ((campaign)) treasurer, the copy shall be forwarded to the ((campaign)) treasurer to be retained by him for his records. Each report shall be certified as correct by the ((campaign)) treasurer or deputy ((campaign)) treasurer making the deposit.

(4) The ((campaign)) treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day and shall be open for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040 ((as now or hereafter amended)), at the principal ((campaign)) headquarters or, if there is no ((campaign)) headquarters, at the address of the ((campaign)) treasurer or such other place as may be authorized by the commission. The ((campaign)) treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(5) All reports filed pursuant to subsections (1) or (2) of this section shall be certified as correct by the candidate and the ((campaign)) treasurer.

(6) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040 ((as now or hereafter amended)), at the principal ((campaign)) headquarters or, if there is no ((campaign)) headquarters, at the address of the ((campaign)) treasurer or such other place as may be authorized by the commission.

Sec. 9. Section 9, chapter 1, Laws of 1973 as last amended by section 2, chapter 12, Laws of 1986 and by section 1, chapter 228, Laws of 1986 and RCW 42.17.090 are each reenacted and amended to read as follows:

(1) Each report required under RCW 42.17.080 (1) and (2) ~~((as now or hereafter amended;))~~ shall disclose ~~((for the period beginning at the end of the period for the last report or, in the case of an initial report, at the time of the first contribution or expenditure, and ending not more than five days prior to the date the report is due))~~ the following:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign or in the case of a continuing political committee, the current calendar year: PROVIDED, That pledges in the aggregate of less than one hundred dollars from any one person need not be reported: PROVIDED FURTHER, That the income which results from ((the conducting of)) a fund-raising activity ((which has previously been reported)) conducted in accordance with RCW 42.17.067 may be reported as one lump sum, with the exception of that portion of such income which was received from persons whose names and addresses are required to be included in the report required by RCW 42.17.067: PROVIDED FURTHER, That contributions of ((tess)) no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the name((s)), address((es)), and amount((s)) of each such contributor: PROVIDED FURTHER, That the money value of contributions of postage shall be the face value of such postage;

(c) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(d) All other contributions not otherwise listed or exempted;

(e) The name and address of each candidate or political committee ((from which the reporting committee or candidate received, or)) to which ((that committee or candidate made;)) any transfer of funds was made, together with the amounts((;)) and dates((, and purpose)) of ((all)) such transfers ~~((Information regarding the following shall be contained in a separate category of the report bearing the title "Transfer of funds": Contributions made from the campaign depository of one candidate to the campaign of another candidate; and contributions received by a candidate; or for the campaign of the candidate, from the campaign depository of another candidate;~~

~~((All other contributions not otherwise listed or exempted));~~

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars ((or more)) during the period covered by this report, and the amount, date, and purpose of each such expenditure. A candidate for state executive or state legislative office or the political committee of such a candidate shall report this information for an expenditure under one of the following categories, whichever is appropriate: (i) Expenditures for the election of the candidate; (ii) expenditures for nonreimbursed public office-related expenses; (iii) expenditures required to be reported under (e) of this subsection; or (iv) expenditures of surplus funds and other expenditures. The report of such a candidate or committee shall contain a separate total of expenditures for each category and a total sum of all expenditures. Other candidates and political committees need not report information regarding expenditures under the categories listed in (i) through (iv) of this subsection or under similar such categories unless required to do so by the commission by rule. The report of such an other candidate or committee shall also contain the total sum of all expenditures;

(g) ((The total sum of expenditures)) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

(h) The surplus or deficit of contributions over expenditures;

(i) The disposition made in accordance with RCW 42.17.095 of any surplus funds;

(j) Such other information as shall be required by the commission by ((regulation)) rule in conformance with the policies and purposes of this chapter; and

(k) Funds received from a political committee ((not domiciled in Washington state or)) not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee ((or the recipient of such funds)) has filed or within ten days following such receipt ((shall)) files with the commission a statement disclosing: (i) its name and address; (ii) the purposes of the nonreporting committee; (iii) the names, addresses, and titles of its officers or if it has no officers, the names, addresses, and titles of its responsible leaders; (iv) ((a statement whether the nonreporting committee is a continuing one, (v))) the name, office sought, and party affiliation of each candidate in the state of Washington whom the nonreporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; ((~~(vi)~~)) (v) the ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition; ((~~(vii)~~)) (vi) the name and address of each person residing in the state of Washington or

corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars (~~((or more))~~) to the nonreporting committee during the current calendar year, together with the money value and date of such contributions; (~~((viii))~~) (vii) the name and address of each person in the state of Washington to whom an expenditure was made by the nonreporting committee on behalf of a candidate or political committee in the aggregate amount of (~~((twenty-five))~~) more than fifty dollars (~~((or more))~~), the amount, date, and purpose of such expenditure, and the total sum of such expenditures; (~~((ix))~~) (viii) such other information as the commission may (~~((by regulation))~~) prescribe by rule, in keeping with the policies and purposes of this chapter. A nonreporting committee incurring an obligation to file additional reports in a calendar year may satisfy the obligation by filing with the commission a letter providing updating or amending information.

(2) The (~~((campaign))~~) treasurer and the candidate shall certify the correctness of each report.

Sec. 10. Section 10, chapter 1, Laws of 1973 as last amended by section 6, chapter 367, Laws of 1985 and RCW 42.17.100 are each amended to read as follows:

(1) For the purposes of this section the term "independent campaign expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, (~~((42.17.065;))~~) 42.17.080, or 42.17.090.

(2) Within five days after the date of making an independent campaign expenditure that by itself or when added to all other such independent campaign expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent campaign expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent campaign expenditure shall file with the commission and the county (~~((auditor))~~) elections officer of the county of residence for the candidate supported or opposed by the independent campaign expenditure (or in the case of an expenditure made in support of or in opposition to a local ballot proposition, the county of residence for the person making the expenditure) an initial report of all independent campaign expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission and the county (~~((auditor))~~) elections officer of the county of residence for the candidate supported or opposed by the independent campaign expenditure (or in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person

making the expenditure) a further report of the independent campaign expenditures made since the date of the last report:

(a) On the twenty-first day (~~(preceding the primary)~~) and the seventh day preceding the date on which the election is held; and

(b) (~~(Within twenty-one days after the date of)~~) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent campaign expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent campaign expenditure, and ending not more than (~~(five days prior to)~~) one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent campaign expenditure was made in the aggregate amount of (~~(twenty-five))~~ more than fifty dollars ((or more)), and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent campaign expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent campaign expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

Sec. 11. Section 1, chapter 176, Laws of 1983 as last amended by section 2, chapter 228, Laws of 1986 and RCW 42.17.105 are each amended to read as follows:

(1) Campaign treasurers shall prepare and deliver to the commission a special report regarding any contribution which:

(a) Exceeds five hundred dollars;

(b) Is from a single person or entity;

(c) Is received before a primary or general election; and

(d) Is received: (i) After the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before that primary; or (ii) within twenty-one days preceding that general election.

(2) Any political committee making a contribution which exceeds five hundred dollars shall also prepare and deliver to the commission the special report if the contribution is made before a primary or general election and: (a) After the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before that primary; or (b) within twenty-one days preceding that general election.

(3) Except as provided in subsection (4) of this section, the special report required by this section shall be delivered in written form, including but not limited to mailgram, telegram, or nightletter. The special report required by subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after, the contribution is received by the candidate or campaign treasurer. The special report required by subsection (2) of this section and RCW 42.17.175 shall be delivered to the commission, and the candidate or political committee to whom the contribution is made, within twenty-four hours of the time, or on the first working day after, the contribution is made.

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and postmarked within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

- (a) The amount of the contribution;
- (b) The date of receipt;
- (c) The name and address of the donor;
- (d) The name and address of the recipient; and
- (e) Any other information the commission may by rule require.

(6) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(7) The commission shall publish daily a summary of the special reports made under this section and RCW 42.17.175.

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for state-wide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a major Washington state political party as defined in RCW 29.01.090.

Sec. 12. Section 6, chapter 336, Laws of 1977 ex. sess. as amended by section 7, chapter 367, Laws of 1985 and RCW 42.17.125 are each amended to read as follows:

Contributions received and reported in accordance with RCW 42.17-.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a ((campaign)) treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individuals's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the committee with written documentation as to the amount, date, and description of each expense, and the committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090.

Sec. 13. Section 3, chapter 228, Laws of 1986 and RCW 42.17.135 are each amended to read as follows:

A candidate or political committee receiving a contribution earmarked for the benefit of another candidate or political committee shall(~~(in addition to reporting))~~):

(1) Report the contribution as required in RCW 42.17.080 and 42.17.090((:));

(2) Complete a report, entitled "Earmarked contributions," on a form prescribed by the commission by rule, which identifies the name and address of the person who made the contribution, the candidate or political committee for whose benefit the contribution is earmarked, the amount of the contribution, and the date on which the contribution was received; and

(3) Notify the commission and the candidate or political committee for whose benefit the contribution is earmarked regarding ((its)) the receipt of the contribution by mailing or delivering to the commission and to the candidate or committee a copy of the "Earmarked contributions" report. Such notice shall be given within two working days of receipt of the contribution.

A candidate or political committee (~~((for whose benefit a contribution is earmarked))~~) receiving notification of an earmarked contribution under subsection (3) of this section shall report ((such earmarked)) the contribution, once the contribution is received by the candidate or committee, in ((a separate category in)) the same manner as the receipt of any other contribution is disclosed in reports required by RCW 42.17.080 and 42.17.090 ((entitled "Earmarked Contributions.")).

NEW SECTION. Sec. 14. This act shall take effect January 1, 1990.

Passed the Senate April 18, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 281

[Substitute House Bill No. 1183]

ADOPTION—INFORMATION TO BE PROVIDED TO ADOPTIVE PARENTS

AN ACT Relating to information provided to adopting parents; amending RCW 26.33.350; and adding new sections to chapter 26.33 RCW.

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

Sec. 1. Section 37, chapter 155, Laws of 1984 and RCW 26.33.350 are each amended to read as follows:

(1) Every person, firm, society, association, or corporation receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption a complete medical report containing all ~~((reasonably))~~ available information concerning the mental, physical, and sensory handicaps of the child. The report shall not reveal the identity of the natural parents of the child but shall include any ~~((reasonably))~~ available mental or physical health history of the natural parents that needs to be known by the adoptive parents to facilitate proper health care for the child or that will assist the adoptive parents in maximizing the developmental potential of the child.

(2) Where available, the information provided shall include:

(a) A review of the birth family's and the child's previous medical history, if available, including x-rays, examinations, hospitalizations, and immunizations;

(b) A physical exam of the child by a licensed physician with appropriate laboratory tests and x-rays;

(c) A referral to a specialist if indicated; and

(d) A written copy of the evaluation with recommendations to the adoptive family receiving the report.

NEW SECTION. Sec. 2. Every person, firm, society, association, or corporation receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption, a family background and child and family social history report, which includes a chronological history of the circumstances surrounding the adoptive placement and any available psychiatric reports, psychological reports, court reports pertaining to dependency or custody, or school reports. Such reports or information shall not reveal the identity of the natural parents of the child.

NEW SECTION. Sec. 3. All families adopting a child through the department shall receive written information on the department's adoption-related services including, but not limited to, adoption support, family reconciliation services, archived records, mental health, and developmental disabilities.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act are each added to chapter 26.33 RCW.

Passed the House April 17, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 282

[Substitute House Bill No. 1756]

TELEPHONES—EXTENDED AREA SERVICE

AN ACT Relating to the provision of extended area service by telecommunications companies; adding new sections to chapter 80.36 RCW; creating new sections; and making an appropriation.

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

NEW SECTION. Sec. 1. Universal telephone service for the people of the state of Washington is a policy goal of the legislature and has been enacted previously into Washington law. Access to universal and affordable telephone service enhances the economic and social well-being of Washington citizens.

NEW SECTION. Sec. 2. As used in section 3 of this act, "extended area service" means the ability to call from one exchange to another exchange without incurring a toll charge.

NEW SECTION. Sec. 3. Any business, resident, or community may petition for and shall receive extended area service within the service territory of the local exchange company that provides service to the petitioner under the following conditions:

(1) Any customer, business or residential, interested in obtaining extended area service in their community must collect and submit to the commission the signatures of a representative majority of affected customers in the community. A "representative majority" for purposes of this section consists of fifteen percent of the access lines in that community;

(2) After receipt of the signatures, the commission shall authorize a study to be conducted by the affected local exchange company in order to determine whether a community of interest exists for the implementation of extended area service. For purposes of this section a community of interest shall be found if the average number of calls per customer per month from the area petitioning for extended area service to the area to which extended area service will be implemented is at least five;

(3) If a community of interest exists, the commission shall then calculate any increased rate that would be applied to the area which would have extended area service granted to it. This rate shall be based on the charges to a rate group having the same or similar calling capability as set forth in the tariffs of the local exchange telecommunications company involved;

(4) The affected telecommunications company shall be given the opportunity to propose an alternative plan that might be priced differently and that plan shall be included in the poll of subscribers as an alternative under subsection (5) of this section;

(5) After determining the amount of any additional rate, the commission shall notify the subscribers who will be affected by the increased rate and conduct a poll of those subscribers. If a simple majority votes its approval the commission shall order extended area service; and

(6) Any extended area service program adopted pursuant to this section shall be considered experimental and not binding on the commission in subsequent extended area service proceedings. If an extended area service program adopted pursuant to this section results in a revenue deficiency for a local exchange company, the commission shall allocate the resulting revenue requirement in a manner which produces fair, just and reasonable rates for all classes of customers.

NEW SECTION. Sec. 4. The pilot program specified in sections 2 and 3 of this act applies only to extended area service petitions which meet the conditions under section 3 of this act, and have been filed with the commission by January 1, 1989. Any petitions for extended area service filed after January 1, 1989, shall be addressed under terms and conditions determined by the commission. By December 1, 1990, the commission shall submit to the energy and utilities committees of the house of representatives and the senate a report on extended area service. The report shall include:

(1) The status of any experimental, pilot program which provides extended area service developed under this section, and whether such an experimental, pilot program approach should continue to be made available;

(2) The status of all extended area service petitions pending at the commission;

(3) Commission action on the recommendations of the local extended calling advisory committee; and

(4) Commission recommendations for any other legislation addressing the issue of extended area service.

NEW SECTION. Sec. 5. The extended area service program under sections 2 through 5 of this act shall expire on December 1, 1990, except for any extended area service obtained by any business residence or community and put in place under section 3 of this act.

NEW SECTION. Sec. 6. The utilities and transportation commission shall study the feasibility of the elimination, by January 1, 1992, of multi-party lines and mileage charges in all telephone exchanges throughout the state and the relationship between mileage charges and extended area service. The study shall include recommendations as to methods to equitably share the costs of any such program, any recommendations for legislative action, and an analysis of technological changes which may alter the telecommunications network in the next decade. The utilities and transportation commission shall report the results of the study to the energy and utilities committees of the house of representatives and the senate by December 1, 1989.

NEW SECTION. Sec. 7. The sum of forty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the public service revolving fund to the utilities and transportation commission for the purposes of section 6 of this act.

NEW SECTION. Sec. 8. Sections 2, 3 and 6 of this act are each added to chapter 80.36 RCW.

Passed the House April 18, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 283

[Substitute Senate Bill No. 5184]

LIMOUSINE SERVICE OPERATORS—CERTIFICATION

AN ACT Relating to commercial limousine operators; amending RCW 81.70.030; and adding a new chapter to Title 81 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) "Commission" means the Washington utilities and transportation commission.

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, or their lessees, trustees, or receivers.

(3) "Public highway" includes every public street, road, or highway in this state.

(4) "Motor vehicle" means every self-propelled vehicle, commonly referred to as a limousine, with seating capacity for four to sixteen persons, excluding the driver.

(5) Subject to the exclusions of section 2 of this act, "limousine charter party carrier of passengers" means every person engaged in the transportation of a person or group of persons, who, under a single contract, acquires the use of a limousine to travel to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the person or group of persons after having left the place of origin.

(6) "Chauffeur" means any person with a valid Washington state driver's license authorized by the Washington utilities and transportation commission to drive a limousine under this chapter.

NEW SECTION. Sec. 2. The provisions of this chapter do not apply to:

(1) Persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs when operated as such;

(2) Private passenger vehicles carrying passengers on a noncommercial enterprise basis;

(3) Charter party carriers of passengers under chapter 81.70 RCW.

NEW SECTION. Sec. 3. No person may engage in the business of a limousine charter party carrier of persons over any public highway without first having obtained a certificate or registration from the commission to do so.

NEW SECTION. Sec. 4. (1) Applications for certificates shall be made to the commission in writing, verified under oath, and shall be in a form and contain information as the commission by regulation may require. Every application shall be accompanied by a fee as the commission may prescribe by rule.

(2) A certificate shall be issued to any qualified applicant authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(3) Before a certificate is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter.

NEW SECTION. Sec. 5. No certificate issued under this chapter or rights to conduct services under it may be leased, assigned, or otherwise transferred or encumbered, unless authorized by the commission.

NEW SECTION. Sec. 6. The commission may cancel, revoke, or suspend any certificate or registration issued under this chapter on any of the following grounds:

- (1) The violation of any of the provisions of this chapter;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the commission pursuant to this chapter;
- (3) Failure of a limousine charter party carrier of passengers to pay a fee imposed on the carrier within the time required by law;
- (4) Failure of a limousine charter party carrier to maintain required insurance coverage in full force and effect; or
- (5) Failure of the certificate holder to operate and perform reasonable services.

NEW SECTION. Sec. 7. After the cancellation or revocation of a certificate or registration or during the period of its suspension, it is unlawful for a limousine charter party carrier of passengers to conduct any operations as such a carrier.

NEW SECTION. Sec. 8. It is the duty of the commission to regulate limousine charter party carriers with respect to safety of equipment, chauffeur qualifications, and safety of operations. The commission shall establish rules and regulations and require such reports as are necessary to carry out the provisions of this chapter.

NEW SECTION. Sec. 9. (1) In granting certificates under this chapter, the commission shall require limousine charter party carriers of passengers to procure and continue in effect during the life of the certificate, liability and property damage insurance from a company licensed to make liability insurance in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in the following amounts:

- (a) Not less than one hundred thousand dollars for any recovery for personal injury by one person;
- (b) Not less than five hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and
- (c) Not less than fifty thousand dollars for damage to property of any person other than the insured; or
- (d) Combined bodily injury, property damage liability insurance of not less than six hundred thousand dollars.

(2) The commission shall fix the amount of the insurance policy or policies giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. Such liability and property damage insurance shall be

maintained in force on each motor-propelled vehicle while so used. Each policy for liability or property damage insurance required herein shall be filed with the commission and kept in effect and a failure so to do is cause for revocation of the certificate.

NEW SECTION. Sec. 10. A limousine charter party carrier of passengers authorized to transport persons for compensation on the highways and engaging in interstate and intrastate operations within the state of Washington, which is or becomes qualified as a self-insurer with the interstate commerce commission of the United States in accordance with the United States interstate commerce act applicable to self-insurance by motor carriers, is exempt from section 9 of this act relating to the carrying or filing of insurance policies in connection with such operations as long as such qualification remains effective.

The commission may require proof of the existence and continuation of qualification with the interstate commerce commission to be made by affidavit of the limousine charter party carrier in a form the commission may prescribe.

NEW SECTION. Sec. 11. In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued by it, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, petitions for writs of review filed with the superior court, appeals or mandates filed with the supreme court or the court of appeals of this state, and may be considered and disposed of by said courts in a manner, under the conditions, subject to the limitations, and with the effect specified in this chapter.

NEW SECTION. Sec. 12. All applicable provisions of this title relating to procedure, powers of the commission, and penalties shall apply to the operation and regulation of persons under this chapter, except as those provisions may conflict with the provisions of this chapter and rules and regulations issued thereunder by the commission.

NEW SECTION. Sec. 13. (1) An application for a certificate or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate, shall be accompanied by such filing fees as the commission may prescribe by rule, however the fee shall not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter shall be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter shall reasonably approximate the cost of supervising and regulating limousine charter party carriers subject thereto, and to that end the commission is authorized to decrease the schedule of fees provided for in section 15 of this act by general order entered before November 1 of any year in which the commission determines that the moneys then in the limousine

charter party carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers during the succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, such increase, not in any event to exceed the schedule set forth in this chapter, may be effected by a similar general order entered before November 1 of any calendar year.

NEW SECTION. Sec. 14. It is unlawful for a limousine charter party carrier of passengers engaged in interstate or foreign commerce to use any of the public highways of this state for the transportation of passengers in interstate or foreign commerce, unless such carrier has identified its vehicles and registered its interstate or foreign operations with the commission. Interstate and foreign carriers possessing operating authority issued by the interstate commerce commission shall register such authority pursuant to P.L. 89-170, as amended, and the regulations of the interstate commerce commission adopted thereunder. Interstate and foreign limousine charter party carriers of passengers exempt from regulation by the interstate commerce commission shall register their interstate operations under regulations adopted by the commission, which shall, to the maximum extent practical, conform to the regulations promulgated by the interstate commerce commission under P.L. 89-170, as amended.

All other provisions of this chapter shall be applicable to motor carriers of passengers engaged in interstate or foreign commerce insofar as the same are not prohibited under the Constitution of the United States or federal statutes.

NEW SECTION. Sec. 15. (1) The commission shall collect from each limousine charter party carrier holding a certificate issued pursuant to this chapter and from each interstate and foreign carrier subject to this chapter, an annual regulatory fee to be established by the commission but which shall not exceed the cost of supervising and regulating such carriers, for each motor vehicle used by such carrier.

(2) All fees prescribed by this section shall be due and payable on or before December 31 of each year, to cover the ensuing year beginning February 1.

NEW SECTION. Sec. 16. The state of Washington fully occupies and preempts the entire field of regulation over limousine charter party carriers of passengers as regulated by this chapter. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to limousine charter party carriers of passengers regulation that are consistent with this chapter. Cities, towns, and counties or other municipalities may enact laws and ordinances which require limousine charter party carriers of passengers to pay business and occupation taxes.

Sec. 17. Section 4, chapter 150, Laws of 1965 and RCW 81.70.030 are each amended to read as follows:

Provisions of this chapter do not apply to:

- (1) Persons operating motor vehicles wholly within the limits of incorporated cities;
- (2) Persons or their lessees, receivers or trustees insofar as they own, control, operate or manage taxicabs, hotel buses or school buses, when operated as such;
- (3) Passenger vehicles carrying passengers on a noncommercial enterprise basis;
- (4) Operators of charter boats operating on waters within or bordering this state; or
- (5) Limousine charter party carriers of passengers under chapter — RCW (sections 1 through 16 of this act).

NEW SECTION. Sec. 18. Sections 1 through 16 of this act shall constitute a new chapter in Title 81 RCW.

Passed the Senate April 20, 1989.

Passed the House April 3, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 284

[Substitute Senate Bill No. 5173]

STATE AUDITOR—DISCLOSURE OF IMPROPER GOVERNMENTAL ACTIONS—DUTIES

AN ACT Relating to disclosure of improper governmental action; amending RCW 42.40.020, 42.40.030, 42.40.040, 42.40.050, and 42.40.070; and repealing RCW 42.40.060.

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

Sec. 1. Section 2, chapter 208, Laws of 1982 and RCW 42.40.020 are each amended to read as follows:

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

- (1) "Auditor" means the office of the state auditor.
- (2) "Employee" means any individual employed or holding office in any department or agency of state government.
- (3) (a) "Improper governmental action" means any action by an employee:
 - ((a)) (i) Which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment; and

~~((b))~~ (ii) Which is in violation of any state law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, or any action which may be taken under chapter 41.06 or 28B.16 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(4) "Use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 or 28B.16 RCW, or other disciplinary action.

Sec. 2. Section 3, chapter 208, Laws of 1982 and RCW 42.40.030 are each amended to read as follows:

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to disclose to the auditor (or representative thereof) information concerning improper governmental action.

~~(2) ((For the purpose of subsection (1) of this section, "use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 RCW, or other disciplinary action.~~

~~(3))~~ Nothing in this section authorizes an individual to disclose information otherwise prohibited by law.

Sec. 3. Section 4, chapter 208, Laws of 1982 and RCW 42.40.040 are each amended to read as follows:

(1) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, for a period not to exceed thirty days, conduct such preliminary investigation of the matter as the auditor deems appropriate. In conducting the investigation, the identity of the person providing the information which initiated the investigation shall be kept confidential.

(2) In addition to the authority under subsection (1) of this section, the auditor may, on its own initiative, investigate incidents of improper state governmental action.

(3) (a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the person, if known, who provided the information initiating the investigation.

(b) The notification shall be by memorandum containing a summary of the information received, a summary of the results of the preliminary investigation with regard to each allegation of improper governmental action, and any determination made by the auditor under (c) of this subsection.

(c) In any case to which this section applies, the identity of the person who provided the information initiating the investigation shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

(d) If it appears to the auditor that the matter does not meet the definition of an "improper governmental action" under RCW 42.40.020(3), or is other than a gross waste of public funds, the auditor may forward a summary of the allegations to the appropriate agency for investigation and require a response by memorandum containing a summary of the investigation with regard to each allegation and any determination of corrective action taken. The auditor will keep the identity of the person who provided the information initiating the investigation confidential. Upon receipt of the results of the investigation from the appropriate agency, the auditor will notify the provider as prescribed under (a), (b), and (c) of this subsection.

(4) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the party, if known, who provided the information initiating the investigation and either conduct further investigations or issue a report under subsection (6) of this section.

(5) (a) At any stage of an investigation under this section the auditor may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the superior court for the county in which the person to whom the subpoena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The auditor may order the taking of depositions at any stage of a proceeding or investigation under this chapter. Depositions shall be taken

before an individual designated by the auditor and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(6) (a) If the auditor determines that there is reasonable cause to believe that an employee has engaged in any improper activity, the auditor shall report the nature and details of the activity to:

(i) The employee and the head of the employing agency; and

(ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate.

(b) The auditor has no enforcement power except that in any case in which the auditor submits a report of alleged improper activity to the head of an agency, the attorney general, or any other individual to which a report has been made under this section, the individual shall report to the auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than thirty days after the date of the auditor's report and monthly thereafter until final action is taken. If the auditor determines that appropriate action is not being taken within a reasonable time, the auditor shall report the determination to the governor and to the legislature.

(7) This section does not limit any authority conferred upon the attorney general or any other agency of government to investigate any matter.

Sec. 4. Section 5, chapter 208, Laws of 1982 and RCW 42.40.050 are each amended to read as follows:

(1) Any employee (a) who provides his or her name and specific information to the auditor on any matter which is found to warrant further investigation or other action, or which is provided by the employee in good faith, as determined by the auditor, whether or not further action is warranted and (b) who is subjected to any reprisal or retaliatory action undertaken during the period beginning on the day after the date on which the specific information is ((provided to the auditor and ending on the date which is two years after the auditor's report on the matter,)) received by the auditor alleging improper governmental action, may seek judicial review of the reprisal or retaliatory action in superior court, whether or not there has been an administrative review of the action. In such an action, the reviewing court may award reasonable attorney's fees.

(2) ~~((The auditor shall, by rule, establish a program which provides that, during the two-year period after a report to the auditor under this chapter, the auditor will contact the employee who provided specific information involved on at least a quarterly basis for purposes of determining))~~ The employee who provided specific information shall notify the state auditor in writing if any changes in the employee's work situation exist which are related to the employee's having provided information. If the auditor has reason to believe that such a change in work situation has occurred, the

auditor shall investigate and report on the matter in accordance with this chapter.

(3) For the purpose of this section "reprisal or retaliatory action" means but is not limited to:

- (a) Denial of adequate staff to perform duties;
- (b) Frequent staff changes;
- (c) Frequent and undesirable office changes;
- (d) Refusal to assign meaningful work;
- (e) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (f) Demotion;
- (g) Reduction in pay;
- (h) Denial of promotion;
- (i) Suspension; and
- (j) Dismissal.

Sec. 5. Section 7, chapter 208, Laws of 1982 and RCW 42.40.070 are each amended to read as follows:

A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter.

NEW SECTION. Sec. 6. Section 6, chapter 208, Laws of 1982 and RCW 42.40.060 are each repealed.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 285

[House Bill No. 2142]

CITIES AND TOWNS—PAYMENT OF LITIGATION EXPENSES TO PARTIES PREVAILING IN ACTIONS AGAINST

AN ACT Relating to litigation expenses for actions against cities; and creating a new section.

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

NEW SECTION. Sec. 1. Any city or town that has had a judgment entered against it in any court may, at the discretion of the city or town legislative authority, reimburse a prevailing party or parties for attorneys' fees and related costs, not to exceed twenty-five thousand dollars.

This section shall expire September 1, 1989.

Passed the House March 15, 1989.

Passed the Senate April 18, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 286

[House Bill No. 2001]

LIVESTOCK—TRESPASS BY

AN ACT Relating to livestock; amending RCW 16.04.010, 16.16.020, 16.24.010, 16.24.020, 16.24.030, 16.24.050, 16.24.060, 16.24.065, 16.24.070, 16.13.020, 16.13.030, 16.13.050, 16.24.090, 16.20.010, 16.28.160, 16.20.035, 16.04.025, 16.57.010, 16.57.290, 16.57.300, and 16.57.410; adding a new section to chapter 16.04 RCW; recodifying RCW 16.16.020, 16.13.020, 16.13.030, 16.13.050, 16.28.160, 16.20.010, 16.13.040, 16.13.060, 16.13.070, 16.13.080, 16.20.020, 16.20.030, 16.20.035, and 16.28.165; repealing RCW 16.28.170, 16.12.010, 16.12.020, 16.12.030, 16.12.070, 16.12.080, 16.12.090, 16.12.100, 16.12.110, 16.13.010, 16.13.090, 16.16.010, 16.16.030, 16.16.040, 16.16.050, 16.16.060, 16.20.040, 16.13.025, and 16.57.295; and prescribing penalties.

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

Sec. 1. Section 1, chapter 31, Laws of 1893 as amended by section 1, chapter 56, Laws of 1925 ex. sess. and RCW 16.04.010 are each amended to read as follows:

Any person suffering damage done by any horses, ~~((mares;))~~ mules, ~~((asses))~~ donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any ~~((cultivated))~~ land ~~((;-inclosed))~~ enclosed by lawful fence ~~((or situated within any district created pursuant to RCW 16.24.010 through 16.24.065;))~~ as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same.

NEW SECTION. Sec. 2. A new section is added to chapter 16.04 RCW to read as follows:

Whenever any animals trespass as provided in RCW 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass.

Sec. 3. Section 2, chapter 124, Laws of 1895 and RCW 16.16.020 are each amended to read as follows:

In any prosecution under ~~((RCW 16.16.010 through 16.16.030))~~ chapter 16.24 RCW proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal ~~((;-and proof that said animal is found at large shall be prima facie evidence that the owner permitted the same to be at large)).~~

Sec. 4. Section 1, chapter 25, Laws of 1911 as amended by section 1, chapter 40, Laws of 1937 and RCW 16.24.010 are each amended to read as follows:

The ~~((board of county commissioners))~~ county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large ~~((:PROVIDED, That))~~. No territory so designated shall be less than two square miles in area ~~((:AND PROVIDED FURTHER, That))~~. RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit ~~((livestock))~~ cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large.

Sec. 5. Section 2, chapter 25, Laws of 1911 as last amended by section 2, chapter 40, Laws of 1937 and RCW 16.24.020 are each amended to read as follows:

Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county ~~((commissioners))~~ legislative authority of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the ~~((board of county commissioners))~~ county legislative authority at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065.

Sec. 6. Section 3, chapter 25, Laws of 1911 as last amended by section 3, chapter 40, Laws of 1937 and RCW 16.24.030 are each amended to read as follows:

Within thirty days after the conclusion of any such hearing the county ~~((commissioners))~~ legislative authority shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks.

Sec. 7. Section 1, chapter 93, Laws of 1923 as amended by section 4, chapter 40, Laws of 1937 and RCW 16.24.050 are each amended to read as follows:

When the county ~~((commissioners))~~ legislative authority of any county deem it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in

RCW 16.24.020. If the county (~~(commissioners)~~) legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, (~~(they)~~) it shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks.

Sec. 8. Section 5, chapter 40, Laws of 1937 and RCW 16.24.060 are each amended to read as follows:

At the point where a public road enters a range area, and at such other points thereon within such area as the county (~~(commissioners)~~) legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK."

Sec. 9. Section 6, chapter 40, Laws of 1937 as amended by section 20, chapter 415, Laws of 1985 and RCW 16.24.065 are each amended to read as follows:

(1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area (~~(; nor shall any person owning or in control of any livestock allow such livestock)~~) or to wander or stray upon the right-of-way of any public highway (~~(of two or more lanes)~~) lying within a stock restricted area when not in the charge of some person.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing.

Sec. 10. Section 127, chapter 189, Laws of 1937 and RCW 16.24.070 are each amended to read as follows:

~~((It shall be unlawful for any person to cause or permit any livestock to graze or stray upon any portion of the right-of-way of any public highway of this state, within any stock restricted area.))~~ It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon.

~~((In the event that any livestock is allowed to stray or graze upon the right-of-way of any public highway, or portion thereof, within any stock restricted area, unattended, the same may be impounded for safekeeping and, if the owner be not known, complaint may be instituted against such stock in a court of competent jurisdiction. Notice shall be published in one issue of a paper of general circulation published as close as possible to the location where the livestock were found, describing as nearly as possible the stock, where found, and that the same are to be sold. In the event that the~~

owner appears and convinces the court of his right thereto, the stock may be delivered upon payment by him of all costs of court, advertising and caring for the stock. In the event no person claiming the right thereto shall appear by the close of business on the tenth day following and exclusive of the date of publication of notice, the stock may be sold at public or private sale, all costs of court, advertising and caring therefor paid from the proceeds thereof and the balance certified by the judge of the court ordering such sale, to the treasurer of the county in which located, to be credited to the county school fund:))

Sec. 11. Section 2, chapter 31, Laws of 1951 as last amended by section 16, chapter 415, Laws of 1985 and RCW 16.13.020 are each amended to read as follows:

Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of ~~((RCW 16.13.010))~~ chapter 16.24 RCW as now or hereafter amended, which are not restrained as provided by RCW 16.04.010, are declared to be a public nuisance~~((, and shall be impounded by the))~~. The sheriff of the county where found(:) and the nearest brand inspector shall ((also)) have authority to impound ((class I estrays as defined in RCW 16.13.025)) such animals which are not restrained as provided by RCW 16.04.010.

Sec. 12. Section 3, chapter 31, Laws of 1951 as last amended by section 7, chapter 154, Laws of 1979 and RCW 16.13.030 are each amended to read as follows:

Upon taking possession of ~~((a class I estray))~~ any livestock at large contrary to the provisions of RCW 16.13.020, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded ((a class I estray)) an animal in accordance with this section, he shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof.

Sec. 13. Section 5, chapter 31, Laws of 1951 and RCW 16.13.050 are each amended to read as follows:

Upon claiming any animal impounded under this chapter, the owner shall pay ~~((the))~~ all costs of transportation, advertising, legal proceedings, and keep ((thereof)) of the animal.

Sec. 14. Section 5, chapter 25, Laws of 1911 and RCW 16.24.090 are each amended to read as follows:

~~((The owner of swine shall not))~~ Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses,

mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory~~((, and any violation of this section shall render such owner liable to the penalties provided for in RCW 16.24.040))~~. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That ~~((swine))~~ such animals may be driven upon the highways while in charge of sufficient attendants.

Sec. 15. Section 1, page 453, Laws of 1890 as amended by section 4, chapter 66, Laws of 1965 and RCW 16.20.010 are each amended to read as follows:

It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper~~((, and))~~. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1 and September 30 of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such ~~((bull))~~ animal, or causing ~~((him))~~ it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal ~~((at the rate of fifty cents per day))~~, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration ~~((the sum of one dollar and fifty cents))~~, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: AND PROVIDED FURTHER, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate ~~((him))~~ the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning.

Sec. 16. Section 2537, Code of 1881 as last amended by section 181, chapter 202, Laws of 1987 and RCW 16.28.160 are each amended to read as follows:

It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. ~~((Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a district judge, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed, and in addition thereto shall be imprisoned until the fine and costs are paid: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended:))~~

Sec. 17. Section 19, chapter 415, Laws of 1985 and RCW 16.20.035 are each amended to read as follows:

RCW 16.20.020 and 16.20.030, each as recodified by this 1989 act, shall not apply to counties lying west of the summit of the Cascade mountains.

NEW SECTION. Sec. 18. The following sections, as amended by this 1989 act, are each recodified as sections in chapter 16.24 RCW: RCW 16.16.020, 16.13.020, 16.13.030, 16.13.050, 16.28.160, and 16.20.010.

NEW SECTION. Sec. 19. RCW 16.13.040, 16.13.060, 16.13.070, 16.13.080, 16.20.020, 16.20.030, 16.20.035, and 16.28.165 are each recodified as sections in chapter 16.24 RCW.

NEW SECTION. Sec. 20. The following acts or parts of acts are each repealed:

- (1) Section 2, chapter 12, Laws of 1891 and RCW 16.28.170;
- (2) Section 1, page 454, Laws of 1890 and RCW 16.12.010;
- (3) Section 2, page 454, Laws of 1890, section 1, chapter 86, Laws of 1927, section 178, chapter 202, Laws of 1987 and RCW 16.12.020;
- (4) Section 3, page 454, Laws of 1890, section 1, chapter 39, Laws of 1899, section 179, chapter 202, Laws of 1987 and RCW 16.12.030;
- (5) Section 7, page 456, Laws of 1890 and RCW 16.12.070;
- (6) Section 8, page 456, Laws of 1890 and RCW 16.12.080;
- (7) Section 1, chapter 115, Laws of 1888, section 1, chapter 53, Laws of 1907, section 1, chapter 159, Laws of 1913, section 1, chapter 33, Laws of 1945 and RCW 16.12.090;

(8) Section 2, chapter 115, Laws of 1888, section 2, chapter 53, Laws of 1907, section 2, chapter 159, Laws of 1913, section 2, chapter 33, Laws of 1945 and RCW 16.12.100;

(9) Section 3, chapter 115, Laws of 1888 and RCW 16.12.110;

(10) Section 1, chapter 31, Laws of 1951, section 13, chapter 7, Laws of 1975 1st ex. sess., section 15, chapter 415, Laws of 1985 and RCW 16.13.010;

(11) Section 9, chapter 31, Laws of 1951 and RCW 16.13.090;

(12) Section 1, chapter 124, Laws of 1895 and RCW 16.16.010;

(13) Section 3, chapter 124, Laws of 1895 and RCW 16.16.030;

(14) Section 2549, Code of 1881 and RCW 16.16.040;

(15) Section 4, page 90, Laws of 1871, section 2547, Code of 1881 and RCW 16.16.050;

(16) Section 4, page 90, Laws of 1871, section 2548, Code of 1881, section 180, chapter 202, Laws of 1987 and RCW 16.16.060;

(17) Section 3, chapter 111, Laws of 1917 and RCW 16.20.040;

(18) Section 22, chapter 154, Laws of 1979 and RCW 16.13.025; and

(19) Section 25, chapter 154, Laws of 1979 and RCW 16.57.295.

Sec. 21. Section 3, chapter 31, Laws of 1893 as last amended by section 24, chapter 415, Laws of 1985 and RCW 16.04.025 are each amended to read as follows:

If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter ~~((16.13))~~ 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit.

Sec. 22. Section 1, chapter 54, Laws of 1959 as last amended by section 15, chapter 296, Laws of 1981 and RCW 16.57.010 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or ~~((his))~~ a duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

~~(8) ("Class I estray" means any cattle or horses at large contrary to the provisions of RCW 16.13.010 as now or hereafter amended, or any unclaimed cattle or horses submitted or impounded by any person at any public livestock market or any other facility approved by the director.~~

~~(9) "Class II estray" means any cattle or horses identified as estray that are offered for sale and as provided for in RCW 16.57.290 as now or hereafter amended.~~

~~(10))~~ "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

~~((11))~~ (9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

Sec. 23. Section 29, chapter 54, Laws of 1959 as last amended by section 20, chapter 296, Laws of 1981 and RCW 16.57.290 are each amended to read as follows:

All unbranded cattle and horses and those bearing brands not recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit, and those bearing brands recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit signed by the owner of the brand when presented for inspection, ~~((are hereby declared to be class II estrays))~~ shall be sold by the director or the director's representative, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in

possession. ~~((Such estrays shall be sold by))~~ Upon the sale of such cattle or horses, the director or ~~((his))~~ the director's representative ~~((who))~~ shall give the purchasers a bill of sale therefor, or, if theft is suspected, the ~~((horse))~~ cattle or horses may be impounded by the director or the director's representative.

Sec. 24. Section 30, chapter 54, Laws of 1959 as amended by section 21, chapter 296, Laws of 1981 and RCW 16.57.300 are each amended to read as follows:

The proceeds from the sale of ~~((class H estrays))~~ cattle and horses as provided for under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of ~~((class H estrays))~~ such cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell such cattle or horses. If such consignor fails to establish legal ownership or the right to sell such cattle or horses, such proceeds shall be paid to the director to be disposed of as any other stray proceeds.

Sec. 25. Section 35, chapter 296, Laws of 1981 and RCW 16.57.410 are each amended to read as follows:

(1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.380 and 16.57.390. Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be ~~((considered a class H stray))~~ sold as provided under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter ~~((34.04))~~ 34.05 RCW.

NEW SECTION. Sec. 26. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 17, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 287

[House Bill No. 2053]

PROPERTY TAX—EXCESS LEVY FOR REDEMPTION PAYMENTS ON BONDS— AUTHORIZATION FOR UP TO NINE YEARS

AN ACT Relating to limiting the one hundred six percent property tax lid; and amending RCW 84.55.050.

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

Sec. 1. Section 24, chapter 288, Laws of 1971 ex. sess. as last amended by section 1, chapter 169, Laws of 1986 and RCW 84.55.050 are each amended to read as follows:

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made. The ballot of the proposition shall state the dollar rate proposed and shall clearly state any conditions which are applicable under subsection (3) of this section.

(2) After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, except as provided in subsection (4) of this section.

(3) A proposition placed before the voters under this section may:

(a) Limit the period for which the increased levy is to be made;

(b) Limit the purpose for which the increased levy is to be made, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

(c) Set the levy at a rate less than the maximum rate allowed for the district; or

(d) Include any combination of the conditions in this subsection.

(4) After the expiration of a limited period or the satisfaction of a limited purpose, whichever comes first, subsequent levies shall be computed as if:

(a) The limited proposition under subsection (3) of this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the limited proposition.

Passed the House April 19, 1989.

Passed the Senate April 11, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 288

[House Bill No. 1872]

HITCHHIKING—LOCAL REGULATION ALLOWED TO CONTROL PROSTITUTION

AN ACT Relating to hitchhiking; amending RCW 46.61.255; and declaring an emergency.

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

Sec. 1. Section 38, chapter 155, Laws of 1965 ex. sess. as amended by section 1, chapter 38, Laws of 1972 ex. sess. and RCW 46.61.255 are each amended to read as follows:

(1) No person shall stand in or on a public roadway or alongside thereof at any place where a motor vehicle cannot safely stop off the main traveled portion thereof for the purpose of soliciting a ride for himself or for another from the occupant of any vehicle.

(2) It shall be unlawful for any person to solicit a ride for himself or another from within the right of way of any limited access facility except in such areas where permission to do so is given and posted by the highway authority of the state, county, city or town having jurisdiction over the highway.

(3) The provisions of subsections (1) and (2) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.

(4) No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(6) ~~((It is the intent of the legislature that this section))~~ (a) Except as provided in (b) of this subsection, the state preempts the field of the regulation of hitchhiking in any form, and no county, city, or town~~((, municipality, or political subdivision thereof))~~ shall take any action in conflict with the provisions of this section.

(b) A county, city, or town may regulate or prohibit hitchhiking in an area in which it has determined that prostitution is occurring and that regulating or prohibiting hitchhiking will help to reduce prostitution in the area.

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

Passed the House March 13, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 289

[House Bill No. 1862]

PUBLIC EMPLOYEES' RETIREMENT SYSTEM—TWELVE-MONTHS SERVICE CREDIT--MEMBERS CONTINUOUSLY EMPLOYED ON NINE-MONTH BASIS

AN ACT Relating to providing twelve-months' service credit to public employees' retirement system members who are employed on a continuous nine-month basis at designated schools; amending RCW 41.40.010 and 41.40.450; and creating a new section.

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

Sec. 1. Section 1, chapter 274, Laws of 1947 as last amended by section 7, chapter 13, Laws of 1985 and RCW 41.40.010 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Retirement board" means the board provided for in this chapter and chapter 41.26 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) (a) "Employer" for persons who establish membership in the retirement system on or before September 30, 1977, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW as now or hereafter amended; and the term shall also include any labor guild, association, or organization the

membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for persons who establish membership in the retirement system on or after October 1, 1977, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.120.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8) (a) "Compensation earnable" for persons who establish membership in the retirement system on or before September 30, 1977, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That if a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee.

(b) "Compensation earnable" for persons who establish membership in the retirement system on or after October 1, 1977, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That in any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(i) the compensation earnable the member would have received had such member not served in the legislature; or

(ii) such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

(9) (a) "Service" for persons who establish membership in the retirement system on or before September 30, 1977, means periods of employment rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Full time work for seventy hours or more in any given calendar month shall constitute one month of service. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

~~((Members employed by the state school for the blind, or the state school for the deaf shall receive twelve months of service for each contract year or school year of employment commencing on or after June 15, 1979:~~

~~Each member who is employed by an institution of higher education or a community college shall receive twelve months of service for each academic year of employment commencing on or after June 15, 1979, in which the member makes member contributions under this chapter for each month of such academic year, and the member is employed in a position which is restricted as to duration by the employer to the academic year:))~~

Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system: PROVIDED FURTHER, That an individual shall receive no more than a total of twelve months of service credit during any calendar year: PROVIDED FURTHER, That where an individual is employed by two or more employers the individual shall only receive one months service credit during any calendar month in which multiple service for seventy or more hours is rendered. Members employed by school districts, the state school for the blind, the state school for the deaf, institutions of higher education, and community colleges may receive up to twelve months of service credit for each school year of employment, subject to RCW 41.40.450.

~~((During the regular contract year or school year of employment, members employed by school districts shall receive service credit in any month in which the school is closed for a vacation period of five calendar days or more. The member shall have been employed or on paid leave of absence for at least three and one-half hours each day the school was open or shall have received compensation for service averaging at least three and one-half hours for each such day:))~~

(b) "Service" for persons who establish membership in the retirement system on or after October 1, 1977, means periods of employment by a

member for one or more employers for which compensation earnable is earned for ninety or more hours per calendar month.

~~((During the regular contract year or school year of employment, members employed by school districts shall receive service credit in any month in which the school is closed for a vacation period of five calendar days or more. The member shall have been employed or on paid leave of absence for at least four and one-half hours each day the school was open or shall have received compensation for service averaging at least four and one-half hours for each such day.))~~

Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits. Members employed by school districts, the state school for the blind, the state school for the deaf, institutions of higher education, and community colleges may receive up to twelve months of service credit for each school year of employment, subject to RCW 41.40.450.

~~((Members employed by school districts, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges shall receive twelve months of service for each contract year or school year of employment.))~~

Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.

A member shall receive a total of not more than twelve months of service for such calendar year: PROVIDED, That when an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(10) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(11) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system: PROVIDED, That an amount equal to the employer and employee contributions which would have been paid to the retirement system on account of such service shall have been paid to the retirement system with interest (as computed by the department) on the employee's portion prior to retirement of such person, by the employee or his employer, except as qualified by RCW 41.40.120: PROVIDED FURTHER, That employer contributions plus employee contributions with interest submitted by the employee under this subsection shall be

placed in the employee's individual account in the employees' savings fund and be treated as any other contribution made by the employee, with the exception that the contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(12) (a) "Beneficiary" for persons who establish membership in the retirement system on or before September 30, 1977, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for persons who establish membership in the retirement system on or after October 1, 1977, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(13) "Regular interest" means such rate as the director may determine.

(14) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(15) (a) "Average final compensation" for persons who establish membership in the retirement system on or before September 30, 1977, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service for which service credit is allowed; or if the member has less than two years of service then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for persons who establish membership in the retirement system on or after October 1, 1977, means the member's average compensation earnable of the highest consecutive sixty months of service prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation.

(16) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(17) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(18) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(19) "Retirement allowance" means the sum of the annuity and the pension.

(20) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.120.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(22) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(23) "Eligible position" means:

(a) Any position which normally requires five or more uninterrupted months of service a year for which regular compensation is paid to the occupant thereof;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(24) "Ineligible position" means any position which does not conform with the requirements set forth in subdivision (23).

(25) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(26) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(27) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(28) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(29) "Director" means the director of the department.

(30) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

Sec. 2. Section 1, chapter 23, Laws of 1973 as last amended by section 1, chapter 136, Laws of 1987 and RCW 41.40.450 are each amended to read as follows:

(1) During the regular contract year or school year of employment, members employed by school districts shall receive service credit in any month in which the school is closed for a vacation period of five calendar days or more. For members who established membership in the retirement system on or before September 30, 1977, the member shall have been employed or on paid leave of absence for at least three and one-half hours each day the school was open or shall have received compensation for service averaging at least three and one-half hours for each such day. For members who established membership in the retirement system on or after October 1, 1977, the member shall have been employed or on paid leave of absence for at least four and one-half hours each day the school was open or shall have received compensation for service averaging at least four and one-half hours for each such day.

(2) Notwithstanding any other law, or rule or regulation of the director, any members employed by ((the)) school districts, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges who ((is)) are actually employed ((by the district)) on a continuous nine month basis and who earn((s)) at least nine months of service credit under RCW 41.40.010(9) during the ((school district's fiscal)) contract year or school year of employment shall receive credit for twelve months of service.

~~((2))~~ (3) The provisions of subsection ((1)) (2) of this section shall be effective on a retroactive basis for all members who retire after ((July 26, 1987)) the effective date of this act.

NEW SECTION. Sec. 3. For the 1988-89 school year only, the term "vacation period" as used in RCW 41.40.010(9), shall include any period of time a school district determines an employee could not perform his or her regular job due to the effects of inclement weather.

Passed the House March 13, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 290

[House Bill No. 1769]

DOMESTIC EXCHANGE STUDENT PROGRAMS—AUTHORIZATION FOR STATE COLLEGES AND UNIVERSITIES TO PARTICIPATE

AN ACT Relating to institutions of higher education; amending RCW 28B.15.014; adding a new section to chapter 28B.15 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that a unique educational experience can result from an undergraduate upper division student attending an out-of-state institution. It also recognizes that some Washington residents may be unable to pursue such out-of-state enrollment owing to their limited financial resources and the higher cost of nonresident tuition. The legislature intends to facilitate expanded nonresident undergraduate upper division enrollment opportunities for residents of the state by authorizing the governing boards of the four-year institutions of higher education to enter into exchange programs with other states' comparable public four-year institutions with comparable programs wherein the participating institutions agree that visiting undergraduate upper division students will pay resident tuition rates of the host institutions.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.15 RCW to read as follows:

The boards of regents of the state universities and the boards of trustees of the regional universities and The Evergreen State College may enter into undergraduate upper division student exchange agreements with comparable public four-year institutions of higher education of other states and agree to charge participating undergraduate upper division students resident tuition rates subject to the following restrictions:

(1) In any given academic year, the number of undergraduate upper division nonresident exchange students receiving nonresident tuition waivers at a state institution, shall not exceed the number of that institution's undergraduate upper division students receiving nonresident tuition waivers at participating out-of-state institutions. Waiver imbalances that may occur in one year shall be off-set in the year immediately following.

(2) Undergraduate upper division student participation in an exchange program authorized by this section is limited to one calendar year.

Sec. 3. Section 4, chapter 273, Laws of 1971 ex. sess. as last amended by section 1, chapter 362, Laws of 1985 and RCW 28B.15.014 are each amended to read as follows:

The following nonresidents shall be exempted from paying the nonresident tuition and fee differential:

(1) Any person who resides in the state of Washington and who holds a graduate service appointment designated as such by a public institution of higher education or is employed for an academic department in support of the instructional or research programs involving not less than twenty hours per week during the term such person shall hold such appointment.

(2) Any faculty member, classified staff member or administratively exempt employee holding not less than a half time appointment at an institution who resides in the state of Washington, and the dependent children and spouse of such persons.

(3) Active-duty military personnel stationed in the state of Washington and the spouses and dependents of such military personnel.

(4) Any immigrant refugee and the spouse and dependent children of such refugee, if the refugee (a) is on parole status, or (b) has received an immigrant visa, or (c) has applied for United States citizenship.

(5) Domestic exchange students participating in the program created under section 2 of this 1989 act.

Passed the House April 17, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 291

[Substitute Senate Bill No. 5543]

NONPROFIT CORPORATIONS—ANNUAL REPORTS AND DESIGNATION AS PUBLIC BENEFIT NONPROFIT CORPORATIONS

AN ACT Relating to nonprofit corporation annual reports; amending RCW 24.03.395, 24.03.005, and 24.03.045; adding new sections to chapter 24.03 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 it is in the public interest to increase the level of accountability to the public of nonprofit corporations through improved reporting, increased consistency between state and federal statutes, and a clear definition of those nonprofit corporations that may hold themselves out as operating to benefit the public.

Sec. 2. Section 80, chapter 235, Laws of 1967 as last amended by section 4, chapter 117, Laws of 1987 and RCW 24.03.395 are each amended to read as follows:

Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated(:);

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office((-));

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state((-));

(4) The names and respective addresses of the directors and officers of the corporation;

(5) An affirmative indication whether or not any change has been made in the corporation's purpose and if so, the nature and reason for the change along with accompanying documentation;

(6) Whether the corporation has filed an internal revenue service form 990 with the internal revenue service, which if filed, shall be made available upon request to the secretary of state's office;

(7) The gross revenue and any unrelated business income as required to be reported under federal law; and

(8) The corporation's unified business identifier number.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may provide that correction or updating of information appearing on previous annual filings is sufficient to constitute the current annual filing.

Sec. 3. Section 2, chapter 235, Laws of 1967 as last amended by section 1, chapter 240, Laws of 1986 and RCW 24.03.005 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(3) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(4) "Articles of incorporation" and "articles" mean the original articles of incorporation and all amendments thereto, and includes articles of merger and restated articles.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means an individual or entity having membership rights in a corporation in accordance with the provisions of its articles or incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles or bylaws.

(8) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(9) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(10) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined that the document complies as to form with the applicable requirements of this chapter.

(11) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(12) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(13) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation.

(14) "Public benefit not for profit corporation" or "public benefit non-profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

NEW SECTION. Sec. 4. There is hereby established the special designation "public benefit not for profit corporation" or "public benefit non-profit corporation." A corporation may be designated as a public benefit nonprofit corporation if it meets the following requirements:

- (1) The corporation complies with the provisions of this chapter; and
- (2) The corporation holds a current tax exempt status as provided under 26 U.S.C. Sec. 501 (c)(3) or is not required to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

NEW SECTION. Sec. 5. A temporary designation as a public benefit nonprofit corporation may be provided to a corporation that has applied for tax exempt status under 26 U.S.C. Sec. 501 (c)(3). The temporary designation is valid for up to one year and may be renewed at the discretion of the secretary.

NEW SECTION. Sec. 6. The secretary shall develop an application process for new and existing corporations to apply for public benefit nonprofit corporation status.

NEW SECTION. Sec. 7. The designation "public benefit nonprofit corporation" shall be renewed annually. The secretary may schedule renewals in conjunction with existing corporate renewals.

NEW SECTION. Sec. 8. The secretary may establish fees to cover the cost of renewals.

NEW SECTION. Sec. 9. The secretary may remove a corporation's public benefit nonprofit corporation designation if it does not comply with the provisions of this chapter or does not maintain its exempt status under 26 U.S.C. Sec. 501 (c)(3). The secretary in removing a corporation's public benefit nonprofit corporation status shall comply with administrative procedures provided by this chapter.

Sec. 10. Section 10, chapter 235, Laws of 1967 as last amended by section 39, chapter 55, Laws of 1987 and RCW 24.03.045 are each amended to read as follows:

The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, any domestic or foreign limited partnership on file with the secretary, or a limited partnership existing under chapter 25.10 RCW, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following:

(a) The written consent of the other corporation, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable

from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet, if it is not in English.

(4) Shall not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof, but may use "club," "league," "association," "services," "committee," "fund," "society," "foundation," ".....", a nonprofit corporation," or any name of like import.

(5) May only include the term "public benefit" or names of like import if the corporation has been designated as a public benefit nonprofit corporation by the secretary in accordance with this chapter.

NEW SECTION. Sec. 11. Sections 4 through 9 of this act are each added to chapter 24.03 RCW.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 17, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 292

[Substitute Senate Bill No. 5305]

EQUINE ACTIVITIES—LIMITATIONS ON CIVIL LIABILITY FOR INJURIES RESULTING FROM

AN ACT Relating to liability for injuries or death while engaged in equine activities; and adding new sections to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. Unless the context clearly indicates otherwise, the definitions in this section apply to sections 1 through 3 of this act.

(1) "Equine" means a horse, pony, mule, donkey, or hinny.

(2) "Equine activity" means: (a) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting; (b) equine training and/or teaching activities; (c) boarding equines; (d) riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some

monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and (e) rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor.

(3) "Equine activity sponsor" means an individual, group or club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity including but not limited to: Pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college sponsored classes and programs, therapeutic riding programs, and, operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.

(4) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

(5) "Engages in an equine activity" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted, and does not mean a spectator at an equine activity or a person who participates in the equine activity but does not ride, train, drive, or ride as a passenger upon an equine.

(6) "Equine professional" means a person engaged for compensation (a) in instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine, or, (b) in renting equipment or tack to a participant.

NEW SECTION. Sec. 2. (1) Except as provided in subsection (2) of this section, an equine activity sponsor or an equine professional shall not be liable for an injury to or the death of a participant engaged in an equine activity, and, except as provided in subsection (2) of this section, no participant nor participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity.

(2)(a) Sections 1 and 2 of this act do not apply to the horse racing industry as regulated in chapter 67.16 RCW.

(b) Nothing in subsection (1) of this section shall prevent or limit the liability of an equine activity sponsor or an equine professional:

(i) If the equine activity sponsor or the equine professional:

(A) Provided the equipment or tack and the equipment or tack caused the injury; or

(B) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, determine the ability of the equine to behave safely with the participant, and determine the ability of the participant to safely manage the particular equine;

(ii) If the equine activity sponsor or the equine professional owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted;

(iii) If the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury;

(iv) If the equine activity sponsor or the equine professional intentionally injures the participant;

(v) Under liability provisions as set forth in the products liability laws; or

(vi) Under liability provisions in chapter 16.04, 16.13, or 16.16 RCW.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act apply only to causes of action filed on or after the effective date of this act.

NEW SECTION. Sec. 4. Sections 1 and 2 of this act are each added to chapter 4.24 RCW.

Passed the Senate April 17, 1989.

Passed the House April 11, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 293

[Substitute Senate Bill No. 5561]

UPLAND FIN FISH REARING FACILITIES—WASTE DISPOSAL AND POLLUTION DISCHARGE PERMITS

AN ACT Relating to upland fin fish rearing facilities; amending RCW 90.48.160; adding a new section to chapter 90.48 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 90.48 RCW to read as follows:

(1) The following definition shall apply to this section: "Upland fin fish hatching and rearing facilities" means those facilities not located within waters of the state where fin fish are hatched, fed, nurtured, held, maintained, or reared to reach the size of release or for market sale. This shall include fish hatcheries, rearing ponds, spawning channels, and other similarly constructed or fabricated public or private facilities.

(2) Not later than September 30, 1989, the department shall adopt standards pursuant to chapter 34.05 RCW for waste discharges from upland fin fish hatching and rearing facilities. In establishing these standards, the department shall incorporate, to the extent applicable, studies conducted

by the United States environmental protection agency on fin fish rearing facilities and other relevant information. The department shall also issue a general permit as authorized by the federal clean water act, 33 U.S.C. 1251 et seq., or RCW 90.48.160 by September 30, 1989, for upland fin fish hatching and rearing facilities. The department shall approve or deny applications for coverage under the general permit for upland fin fish hatching and rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW. The department shall notify applicants for coverage by a general permit as soon as it determines that a proposed discharge meets or fails to comply with the standards or general permit conditions set forth pursuant to this section, or that a time period longer than one hundred eighty days is necessary to satisfy public participation requirements or the state environmental policy act.

Sec. 2. Section 1, chapter 71, Laws of 1955 as last amended by section 3, chapter 155, Laws of 1973 and RCW 90.48.160 are each amended to read as follows:

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems; or

(2) Any category of waste disposer;

if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland fin fish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 294

[Substitute Senate Bill No. 5369]

MOBILE HOME SPACE AVAILABILITY AND AFFORDABILITY TASK FORCE

AN ACT Relating to mobile homes; and amending RCW 59.22.050.

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

Sec. 1. Section 2, chapter 280, Laws of 1988 and RCW 59.22.050 are each amended to read as follows:

(1) In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs which will serve as the coordinating office within state government for matters relating to mobile homes or manufactured housing.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) In addition, the office shall work with the mobile home space availability and affordability task force to develop recommendations to (a) increase the availability of mobile home park spaces, (b) stabilize rent levels through traditional market forces of supply and demand and through incentives such as current use valuation of mobile home parks, but not through artificial controls on rent, and (c) allow senior citizens on fixed incomes to continue living in their mobile homes, including the possibility of direct subsidies.

The mobile home space availability and affordability task force shall be comprised of four legislators, one from each caucus in the house of representatives appointed by the speaker of the house and one from each caucus in the senate appointed by the president of the senate, two representatives of park-owners, two representatives of tenants, and two representatives of local governments. All nonlegislative members shall be appointed by the director of the department of community development. Staffing for the task force shall be supplied by the department of community development, the

house of representatives housing committee, and the senate economic development and labor committee.

(3) In developing these recommendations the office and the task force shall:

(a) Review the ordinances of local government to assess their impact on the availability of mobile home rental spaces;

(b) Consult with federal, state, and local agencies, senior citizen organizations, the real estate industry, and other groups as it considers necessary;

(c) Use, to the fullest extent possible, the services, facilities, information, and advice of public and private agencies, organizations, and individuals in order to avoid duplication of effort and expense; and

(d) Hold public hearings to allow public input and involvement.

Passed the Senate April 17, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 295

[Substitute Senate Bill No. 5265]

CHARTER BOATS—REGULATION OF SERVICES OPERATING ON STATE WATERS

AN ACT Relating to the regulation of charter boats; amending RCW 88.04.310, 88.04.320, and 88.04.330; adding new sections to chapter 88.04 RCW; repealing RCW 88.04.300; prescribing penalties; and making an appropriation.

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

NEW SECTION. Sec. 1. The purposes of this chapter are as follows:

(1) Regulate charter boats for the carrying of more than six passengers, which are operated on inland navigable waters of the state and which are not regulated by the United States coast guard;

(2) Protect the safety and health of employees, passengers, and persons utilizing charter boats;

(3) Authorize the department of labor and industries to adopt rules regulating the use of charter boats operating on inland navigable waters of the state and to issue licenses; and

(4) Provide penalties for violations of this chapter.

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

(1) "Department" means the department of labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on inland navigable waters of the state of Washington which is not inspected or licensed

by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) "Inland navigable waters" means all waters within the territorial limits of the state of Washington, shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, lakes, and other inland waters of the state.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and route of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a seaplane or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

NEW SECTION. Sec. 3. A person shall not rent, lease, or hire out a charter boat, nor carry, advertise for the carrying of, nor arrange for the carrying of, more than six passengers on a vessel for a fee or other consideration on the inland navigable waters of the state unless each of the following conditions is satisfied:

(1)(a) The department has inspected the vessel within the previous twelve months and has issued for the vessel a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers; or

(b) The United States coast guard has inspected the vessel and has issued a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers.

(2) The operator of the vessel is licensed as an operator by either the United States coast guard or the department. The operator must carry such

license at all times while operating the vessel and must display such license upon demand by the department.

(3) The vessel has a valid and current registration certificate which is available for inspection by the department.

(4) The vessel is covered by current and valid liability insurance. Proof of such coverage must be provided to the department upon demand.

NEW SECTION. Sec. 4. The department shall inspect or provide for the inspection of every charter boat once every twelve months with the vessel in the water, and once every twenty-four months with the vessel in drydock, to determine if the vessel and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations. In addition, the department may at any time inspect or provide for the inspection of any charter boat if the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property on the vessel.

(1) Ninety days before any certificate of inspection expires, the department shall mail written notification to the owner of the vessel that a twelve-month or twenty-four-month inspection must be completed before the expiration date. The department shall include with the notification an application for inspection, which must be completed and returned by the owner no later than sixty days before the expiration date of the current certificate of inspection. The owner shall include the registration fee with the completed application form. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If, after the inspection, the department determines that the charter boat and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall issue to the owner of the charter boat a certificate of inspection. Such certificate shall specify the maximum passenger, crew, and total person capacity of the charter boat. The certificate shall be valid for one year from the date of issuance. The certificate shall be prominently displayed on the charter boat while the charter boat is operating upon the inland navigable waters of the state.

(3) The department shall determine the minimum number of crew necessary for the safe operation of the charter boat.

(4) If the department determines that the charter boat or its equipment does not comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall not issue a certificate of inspection and any current certificate of inspection shall be revoked by the department.

NEW SECTION. Sec. 5. (1) The owner of a vessel which does not have a current certificate of inspection or which has not previously been inspected by the department and which must be inspected by the department shall file an application for inspection, accompanied by the required fee, no later than sixty days before the scheduled or requested inspection date. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If a charter boat has not been inspected during the twenty-four-month period prior to the effective date of this act, the owner shall pay to the department the inspection fee for inspection in the water and the inspection fee for inspection in drydock.

(3) When the department inspects or provides for the inspection of any charter boat because the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property, the owner shall not be required to pay an inspection fee for that inspection.

(4) When a twelve-month in-water inspection and a twenty-four-month drydock inspection are required in the same year, the owner shall only be required to pay the fee for the drydock inspection.

(5) All sums received from licenses, inspection fees, or other sources described in this chapter shall be deposited in the industrial insurance trust funds and shall be used for administrative, education, and enforcement costs associated with this chapter.

Sec. 6. Section 2, chapter 74, Laws of 1979 and RCW 88.04.310 are each amended to read as follows:

~~((All vessels shall be inspected by the department in accordance with rules adopted under RCW 88.04.330:))~~ The owner or operator of every vessel inspected by the department shall pay the department a fee for each inspection ~~((as may be determined by the director under RCW 88.04.330)).~~ The fee shall be established by rule and shall cover the full cost of the inspection program including travel, per diem, ~~((and administrative and legal support costs for the program))~~ administrative and legal support costs for the program, and repayment to the state general fund by June 30, 1991, of the amount appropriated in section 15 of this act for the program.

Sec. 7. Section 3, chapter 74, Laws of 1979 and RCW 88.04.320 are each amended to read as follows:

(1) It is unlawful for any person to operate a vessel unless that person holds a valid license issued by the United States coast guard or the department to operate a vessel of that class.

(2) It is unlawful for any person to operate a vessel unless the vessel is operated in compliance with the rules of the department of labor and industries and has a current certificate of inspection posted.

(3) Any violation of the licensing and inspection provisions of this chapter is punishable pursuant to the penalties provided under the Washington industrial safety and health act, chapter 49.17 RCW.

Sec. 8. Section 4, chapter 74, Laws of 1979 and RCW 88.04.330 are each amended to read as follows:

(1) The department shall adopt by rule, under chapter (~~(34.04)~~) 34.05 RCW:

(a) Procedures, standards, and fees for the licensing of operators of any vessel used as a charter boat, as defined under section 2 of this act, operating on inland navigable waters for rent, lease, or hire;

(b) Standards and fees for the inspection of vessels;

~~((b) The federal laws and rules relating to navigation as they are now or hereafter amended; and))~~

(c) Minimum safety and health standards for passengers and crew on board charter boats. These rules shall approximate, where appropriate, the rules adopted by the United States coast guard in 46 C.F.R., subchapter T, small passenger vessels under one hundred gross tons; and

(d) Any other rules needed for the efficient administration of the purposes of this chapter.

(2) Rules adopted by the department shall use United States coast guard standards and precedents and be consistent with United States coast guard practices whenever possible.

NEW SECTION. Sec. 9. (1) A person who has been denied a certificate of inspection or a license may petition the department for an evidentiary hearing.

(2) A person who owns a charter boat may petition the department for an evidentiary hearing regarding the determination of the maximum passengers, crew, or total capacity of the charter boat.

NEW SECTION. Sec. 10. (1) The department may enter into reciprocal agreements with other states concerning the operation and inspection of charter boats from those states that operate on the inland navigable waters of the state of Washington. Reciprocity shall be granted only if a state can establish to the satisfaction of the department that their laws and standards concerning charter boats meet or exceed the laws and rules of the state of Washington. A charter boat that operates on the inland navigable waters of this state under a reciprocal agreement pursuant to this section shall obtain an annual operating permit from the department for a fee for each year the charter boat does business on the waters of the state of Washington. The department shall deposit the fees from annual operating permits issued pursuant to this section in the industrial insurance trust funds.

(2) The department shall develop an education and enforcement program designed to eliminate the operation of charter boats that have not

been inspected and certified as required by this chapter, and shall prepare printed materials to provide the public with information regarding the safety features and requirements necessary for the lawful operation of charter boats.

NEW SECTION. Sec. 11. The provisions of this chapter shall not apply to:

(1) A vessel that is a charter boat but is being used by the documented or registered owner of the charter boat exclusively for the owner's own non-commercial or personal pleasure purposes;

(2) A vessel owned by a person or corporate entity which is donated and used by a person or nonprofit organization to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(3) A vessel that is rented, leased, or hired by an operator to transport passengers for noncommercial or personal pleasure purposes; or

(4) A vessel used exclusively for, or incidental to, an educational purpose.

NEW SECTION. Sec. 12. Unless specifically provided by statute this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW.

NEW SECTION. Sec. 13. This chapter may be known and cited as the charter boat safety act.

NEW SECTION. Sec. 14. Sections 1 through 5 and 9 through 13 of this act are each added to chapter 88.04 RCW.

NEW SECTION. Sec. 15. The sum of forty-eight thousand three hundred dollars, or as much thereof as may be necessary, is appropriated from the general fund for the biennium ending June 30, 1991, to provide funds for start-up costs on a one-time basis.

NEW SECTION. Sec. 16. Section 1, chapter 74, Laws of 1979 and RCW 88.04.300 are each repealed.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 296

[House Bill No. 1904]

TRANSPORTATION IMPACT FEES—CREDIT FOR OFF-SITE TRANSPORTATION IMPROVEMENTS

AN ACT Relating to private participation for funding transportation improvements; and amending RCW 39.92.040.

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

Sec. 1. Section 4, chapter 179, Laws of 1988 and RCW 39.92.040 are each amended to read as follows:

The program shall describe the formula or method for calculating the amount of the transportation impact fees to be imposed on new development within the plan area. The program may require developers to pay a transportation impact fee for off-site transportation improvements not yet constructed and for those jointly-funded improvements constructed since the commencement of the program.

The program shall define the event in the development approval process that triggers a determination of the amount of the transportation impact fees and the event that triggers the obligation to make actual payment of the fees. However, the payment obligation shall not commence before the date the developer has obtained a building permit for the new development or, in the case of residential subdivisions or short plats, at the time of final plat approval, at the developer's option. If the developer of a residential subdivision or short plat elects to pay the fee at the date a building permit has been obtained, the option to pay the transportation impact fee by installments as authorized by this section is deemed to have been waived by the developer. The developer shall be given the option to pay the transportation impact fee in a lump sum, without interest, or by installment with reasonable interest over a period of five years or more as specified by the local government.

The local government shall require security for the obligation to pay the transportation impact fee, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the local government. The developer shall also be given credit against its obligations for the transportation impact fee, for the fair market value of off-site land and/or the cost of constructing ~~((improved))~~ off-site transportation ~~((facilities))~~ improvements dedicated to the local government. If the value of the dedication exceeds the amount of transportation impact fee obligation, the developer is entitled to reimbursement from transportation impact fees attributable to the dedicated ~~((facilities))~~ improvements and paid by subsequent developers within the plan area.

Payment of the transportation impact fee entitles the developer and its successors and assigns to credit against any other fee, local improvement

district assessment, or other monetary imposition made specifically for the designated off-site transportation improvements intended to be covered by the transportation impact fee imposed pursuant to this program. The program shall also define the criteria for establishing periodic fee increases attributable to construction and related cost increases for the improvements designated in the program.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 297

[House Bill No. 2010]

DISABLED HUNTER PERMITS

AN ACT Relating to permitting hunting by nonambulatory disabled persons; amending RCW 46.09.130, 46.10.130, 77.16.250, 77.16.260, and 77.08.010; and adding new sections to chapter 77.32 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.32 RCW to read as follows:

The commission shall attempt to enhance the hunting opportunities of persons of disability. The commission shall authorize the director to issue disabled hunter permits to persons of disability. The commission shall adopt rules governing the conduct of disabled hunters and their nondisabled companions.

NEW SECTION. Sec. 2. A new section is added to chapter 77.32 RCW to read as follows:

(1) A disabled hunter who possesses a disabled hunter permit and all appropriate hunting licenses may possess a loaded firearm or other legal hunting device in and may discharge a firearm or other legal hunting device from a nonmoving motor vehicle that has the engine turned off. Disabled hunters shall not be exempt from permit requirements for carrying concealed weapons, or from rules, laws, or ordinances concerning the discharge of these weapons. No hunting shall be permitted from a motor vehicle that is parked on or beside the maintained portion of a public road.

(2) A person of disability holding a disabled hunter permit may be accompanied by one nondisabled licensed hunter who may assist the disabled hunter by killing game wounded by the disabled hunter, and by tagging and retrieving game killed by the disabled hunter. A nondisabled hunter shall not possess a loaded gun in, or shoot from, a motor vehicle.

Sec. 3. Section 18, chapter 47, Laws of 1971 ex. sess. as last amended by section 7, chapter 206, Laws of 1986 and RCW 46.09.130 are each amended to read as follows:

No person may operate a nonhighway vehicle in such a way as to endanger human life (~~(or)~~). No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of wildlife under section 1 of this 1989 act: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

Violation of this section is a gross misdemeanor.

Sec. 4. Section 13, chapter 29, Laws of 1971 ex. sess. as amended by section 11, chapter 182, Laws of 1979 ex. sess. and RCW 46.10.130 are each amended to read as follows:

No person shall operate a snowmobile in such a way as to endanger human life(~~(-or)~~). No person shall operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal, nor shall he carry any loaded weapon upon, nor hunt from, any snowmobile except by permit issued by the director of wildlife under section 1 of this 1989 act. Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

Sec. 5. Section 77.16.250, chapter 36, Laws of 1955 as amended by section 93, chapter 78, Laws of 1980 and RCW 77.16.250 are each amended to read as follows:

Except as provided in RCW 77.16.290 and section 2 of this 1989 act, it is unlawful to carry, transport, convey, possess, or control in or on a motor vehicle a shotgun or rifle containing shells or cartridges in the magazine or chamber, or a muzzle-loading firearm loaded and capped or primed.

***Sec. 6. Section 77.16.260, chapter 36, Laws of 1955 as last amended by section 94, chapter 78, Laws of 1980 and RCW 77.16.260 are each amended to read as follows:**

Except as provided in RCW 77.16.290 and section 2 of this 1989 act, it is unlawful to shoot a firearm from, across, or along the maintained portion of a public highway.

***Sec. 6 was vetoed, see message at end of chapter.**

Sec. 7. Section 77.08.010, chapter 36, Laws of 1955 as last amended by section 11, chapter 506, Laws of 1987 and RCW 77.08.010 are each amended to read as follows:

As used in this title or rules adopted pursuant to this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of wildlife.
- (2) "Department" means the department of wildlife.

(3) "Commission" means the state wildlife commission.

(4) "Person" means and includes an individual, a corporation, or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Wildlife agent" means a person appointed and commissioned by the director, with authority to enforce laws and rules adopted pursuant to this title, and other statutes as prescribed by the legislature.

(6) "Ex officio wildlife agent" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio wildlife agent" includes fisheries patrol officers, special agents of the national marine fisheries commission, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish" and its derivatives means an effort to kill, injure, harass, or catch a game fish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, or possession of game animals, game birds, or game fish. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established as an open season.

(12) "Closed area" means a place where the hunting of some species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing for game fish is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, the family Muridae of the order Rodentia (old world rats and mice), or those fish, shellfish, and

marine invertebrates classified by the director of fisheries. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

Passed the House March 9, 1989.

Passed the Senate April 12, 1989.

Approved by the Governor May 8, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 8, 1989.

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

"I am returning herewith, without my approval as to section 6, House Bill No. 2010 entitled:

"AN ACT Relating to permitting hunting by nonambulatory disabled persons."

Current law prohibits hunters from carrying a loaded weapon in a motor vehicle and prohibits hunting from a non-highway vehicle or snowmobile. This legislation would give disabled hunters the opportunity to hunt by allowing hunting from a non-highway vehicle or snowmobile.

This legislation sets good policy regarding the enhancement of the hunting opportunities for disabled persons. The need to veto section 6 relates solely to an inconsistency. Existing law prohibits hunting from, across or along the maintained portion of a public highway. It is stated in new section 2, "No hunting shall be permitted from a motor vehicle that is parked on or beside the maintained portion of a public road." Yet section 6 implies that disabled hunters may shoot from, across or along public highways. To remove this inconsistency, it is necessary to veto section 6, which then leaves the current prohibition in place.

With the exception of section 6, House Bill No. 2010 is approved."

CHAPTER 298

[Substitute House Bill No. 2012]

PORT DISTRICTS—RESTRICTIONS ON SALE AND LEASE OF DISTRICT LAND REMOVED

AN ACT Relating to restrictions on the sale or lease of port district land; and amending RCW 53.08.040 and 53.08.080.

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

Sec. 1. Section 5, chapter 65, Laws of 1955 as last amended by section 1, chapter 54, Laws of 1972 ex. sess. and RCW 53.08.040 are each amended to read as follows:

A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands (~~((for sale or lease))~~) for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities: PROVIDED, That no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port: AND PROVIDED FURTHER, That no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for

the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities: **PROVIDED, HOWEVER,** That where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions.

Sec. 2. Section 9, chapter 65, Laws of 1955 as last amended by section 1, chapter 64, Laws of 1983 and RCW 53.08.080 are each amended to read as follows:

A district may lease all lands, wharves, docks and real and personal property owned and controlled by it, for such purposes and upon such terms as the port commission deems proper: **PROVIDED,** That no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years, except where the property involved is or is to be devoted to airport purposes the port commission may lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years: **PROVIDED FURTHER,** That where the property is held by the district under lease from the United States government or the state of Washington, or any agency or department thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such lease, but in any event not to exceed ninety years.

Passed the House April 15, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor May 8, 1989.

Filed in Office of Secretary of State May 8, 1989.

CHAPTER 299

[Substitute Senate Bill No. 5776]

LAW ENFORCEMENT OFFICERS—BASIC TRAINING

AN ACT Relating to law enforcement training; amending RCW 43.101.200; and creating a new section.

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

****NEW SECTION. Sec. 1. The department of community development shall establish an advisory committee to study the issue of untrained and un-certified city and town law enforcement personnel. This study shall include a***

determination of the number of such uncertified personnel, location of the cities and towns with such uncertified personnel, other responsibilities that such uncertified personnel may have within the city or town, training needs for such uncertified personnel, and alternative measures to address the training needs.

The advisory committee shall be chaired by the director of the department of community development, or the director's designee. The remaining members on the advisory committee shall be law enforcement personnel and representatives of cities and towns. Technical assistance and staff support shall be provided by the criminal justice training commission.

The advisory committee shall report its findings, and any proposed legislation relating to such findings, to the legislature on or before January 15, 1990.

*Sec. 1 was vetoed, see message at end of chapter.

Sec. 2. Section 2, chapter 212, Laws of 1977 ex. sess. and RCW 43-.101.200 are each amended to read as follows:

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080 and 43-.101.160. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) The commission shall provide the aforementioned training together with necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week. Additionally, the commission shall reimburse to participating law enforcement agencies with ten or less full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his training period.

Passed the Senate April 17, 1989.

Passed the House April 13, 1989.

Approved by the Governor May 8, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 8, 1989.

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

"I am returning herewith, without my approval as to section 1, Substitute Senate Bill No. 5776 entitled:

"AN ACT Relating to law enforcement training."

Section 1 of this measure requires the Department of Community Development (DCD) to establish an advisory committee to study the issue of untrained and uncertified city and town law enforcement personnel. The advisory committee would be chaired by the director of DCD, while technical assistance and staff support would be provided by the Criminal Justice Training Commission (CJTC).

I believe it is important that we ensure our citizens that their law enforcement officers are properly trained. However, evidence has not been provided that this issue is of such compelling public interest that a study, conducted by a new advisory committee, should be statutorily authorized. Furthermore, it is inappropriate to have the resources of one executive agency subject to the authority of another agency director.

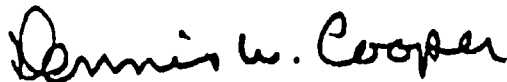
Section 2 of this measure requires law enforcement personnel hired after January 1, 1990, to commence training within six months of employment. Current law allows a much greater time before training must be completed. I support this change and believe it will serve to enhance the professionalism of our public safety officers.

With the exception of section 1, Substitute Senate Bill No. 5776 is approved."

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, do hereby certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by the provisions of 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 1989 regular session (51st Legislature), chapters 1 through 299, as certified and transmitted to the Statute Law Committee by the Secretary of State pursuant to RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this twenty-third day of June, 1989.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D".

DENNIS W. COOPER
Code Reviser

