

1994
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-THIRD LEGISLATURE
Convened January 10, 1994. Adjourned March 10, 1994.

1ST SPECIAL SESSION
FIFTY-THIRD LEGISLATURE
Convened March 11, 1994. Adjourned March 14, 1994.



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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, P.O. Box 40552, Olympia, Washington 98504-0552 at \$5.40 per set (5.00 plus \$.40 for state and local sales tax of 7.9%). All orders must be accompanied by payment.
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2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

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

- (a) In amendatory sections
- (i) underlined matter is new matter.
 - (ii) deleted matter is (~~lined out and bracketed between double parentheses~~).
- (b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES

- (a) Vetoed matter is *printed in bold italics*.
- (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

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

5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 1994 regular session to be June 9, 1994 (midnight June 8th). The pertinent date for the Laws of the 1994 1st special session is June 13, 1994 (midnight June 12th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date, take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 1994 laws may be found at the back of the final pamphlet edition and the permanent bound edition.

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CHAPTER 1

[Initiative 593]

PERSISTENT OFFENDERS—LIFE SENTENCE ON THIRD CONVICTION

AN ACT Relating to persistent offenders; reenacting and amending RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec. 1. FINDINGS AND INTENT.** (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process.

Sec. 2. RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992 c 45 s 5 are each reenacted and amended to read as follows:

ENFORCEMENT OF MANDATORY MINIMUM SENTENCES. When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), 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) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death,

notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years (~~and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-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. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement

if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender

treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (7) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (7) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex 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 sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(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 or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(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 payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(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, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) 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.

(15) 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).

(16) 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.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(19) 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. 3. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

DEFINITIONS. 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.

(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.

(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.

(5) "Community placement" means that 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.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 45.61.524. 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.

(8) "Confinement" means total or partial confinement as defined in this section.

(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.

(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.

(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" shall always include juvenile convictions for sex offenses and shall also include a defendant's other 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.

(13) "Department" means the department of corrections.

(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 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.

(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.

(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 be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(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.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(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 or the selling for profit ~~((of))~~ of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, 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 except for adjudications of sex offenses.

(21) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(u) Any felony offense in effect at any time prior to the effective date of this section, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection.

(22) "Nonviolent offense" means an offense which is not a violent offense.

~~((22))~~ (23) "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.

~~((23))~~ (24) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement

includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

~~((24))~~ (25) "Persistent offender" is an offender who:

(a) Has been convicted in this state of any felony considered a most serious offense; and

(b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

(26) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((25))~~ (27) "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.

~~((26))~~ (28) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((27))~~ (29) "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, assault of a child 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.

~~((28))~~ (30) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((29))~~ (31) "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;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(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 sex offense under (a) of this subsection.

~~((30))~~ (32) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((31))~~ (33) "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.

~~((32))~~ (34) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((33))~~ (35) "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, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, 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.

~~((34))~~ (36) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate

on a work crew. Offenders sentenced for a sex offense as defined in subsection ~~((29))~~ (31) of this section are not eligible for the work crew program.

~~((35))~~ (37) "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.

~~((36))~~ (38) "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, any drug offense, 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, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

NEW SECTION. Sec. 4. OFFENDER NOTIFICATION AND WARNING.

A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties.

NEW SECTION. Sec. 5. GOVERNOR'S POWERS. (1) Nothing in this act shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender.

NEW SECTION. Sec. 6. 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. 7. SHORT TITLE. This act shall be known and may be cited as the persistent offender accountability act.

NEW SECTION. Sec. 8. CAPTIONS. Captions as used in this act do not constitute any part of the law.

Originally filed in Office of Secretary of State January 11, 1993.

Approved by the People of the State of Washington in the General Election on November 2, 1993.

CHAPTER 2

[Initiative 601]

STATE EXPENDITURE AND TAXATION LIMITS

AN ACT Relating to greater governmental fiscal responsibility through limitations on expenditures and taxation; amending RCW 43.135.010, 43.135.060, and 43.84.092; adding new sections to chapter 43.135 RCW; adding a new section to chapter 43.88 RCW; creating a new section; repealing RCW 43.88.520, 43.88.525, 43.88.530, 43.88.535, 43.88.540, 43.135.020, 43.135.030, 43.135.040, 43.135.050, 43.135.070, 43.135.900, and 43.135.901; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 43.135.010 and 1980 c 1 s 1 are each amended to read as follows:

The people of the state of Washington hereby find and declare:

(1) The continuing increases in our state tax burden and the corresponding growth of state government is contrary to the interest of the people of the state of Washington.

(2) It is necessary to limit the rate of growth of state government while assuring adequate funding of essential services, including basic education as defined by the legislature.

(3) The current budgetary system in the state of Washington lacks stability. The system encourages crisis budgeting and results in cutbacks during lean years and overspending during surplus years.

(4) It is therefore the intent of this chapter to:

(a) Establish a limit (~~((which))~~) on state expenditures that will assure that the growth rate of state (~~((tax revenue))~~) expenditures does not exceed the growth rate of inflation and state (~~((personal income))~~) population;

(b) Assure that local governments are provided funds adequate to render those services deemed essential by their citizens;

(c) Assure that the state does not impose(~~((, on any taxing district,))~~) responsibility on local governments for new programs or increased levels of service under existing programs unless the costs thereof are paid by the state;

(d) Provide for adjustment of the limit when costs of a program are transferred between the state and another political entity; (~~((and))~~)

(e) Establish a procedure for exceeding this limit in emergency situations;

(f) Provide for voter approval of tax increases; and

(g) Avoid overfunding and underfunding state programs by providing stability, consistency, and long-range planning.

NEW SECTION. Sec. 2. (1) The state shall not expend from the general fund during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under section 4 of this act or pursuant to an appropriation under section 3(4)(b) of this act, the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund expenditure for any fiscal year in excess of the state

expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

(3) The state expenditure limit for any fiscal year shall be the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor.

(4) For purposes of computing the state expenditure limit for the fiscal year beginning July 1, 1995, the phrase "the previous fiscal year's state expenditure limit" means the total state expenditures from the state general fund, not including federal funds, for the fiscal year beginning July 1, 1989, plus the fiscal growth factor. This calculation is then computed for the state expenditure limit for fiscal years 1992, 1993, 1994, and 1995, and as required under section 4(4) of this act.

(5) Each November, the office of financial management shall adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years. The office of financial management shall notify the legislative fiscal committees of all adjustments to the state expenditure limit and projections of future expenditure limits.

(6) "Fiscal growth factor" means the average of the sum of inflation and population change for each of the prior three fiscal years.

(7) "Inflation" means the percentage change in the implicit price deflator for the United States for each fiscal year as published by the federal bureau of labor statistics.

(8) "Population change" means the percentage change in state population for each fiscal year as reported by the office of financial management.

NEW SECTION. Sec. 3. (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of biennial general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer to the education construction fund hereby created in the treasury.

(4)(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

NEW SECTION. Sec. 4. (1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The office of financial management shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for inflation and population increases?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the office of financial management shall lower the state expenditure limit to reflect the shift.

Sec. 5. RCW 43.135.060 and 1990 2nd ex.s. c 1 s 601 are each amended to read as follows:

(1) After July 1, 1995, the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any ~~((taxing district))~~ political subdivision of the state unless the ~~((districts are reimbursed for the costs thereof by the state.~~

~~(2) The amount of increased local revenue and state appropriations and distributions that are received or could be received by a taxing district as a result of legislative enactments after 1979 shall be included as reimbursement under this section. This subsection does not affect litigation pending on January 1, 1990.~~

~~(3))~~ subdivision is fully reimbursed by specific appropriation by the state for the costs of the new programs or increases in service levels.

(2) If by order of any court, or legislative enactment, the costs of a federal or ~~((taxing district))~~ local government program are transferred to or from the state, the otherwise applicable state ~~((tax revenue))~~ expenditure limit shall be increased or decreased, as the case may be, by the dollar amount of the costs of the program.

~~((4))~~ (3) The legislature, in consultation with the office of financial management or its successor agency, shall determine the costs of any new programs or increased levels of service under existing programs imposed on any ~~((taxing district))~~ political subdivision or transferred to or from the state.

~~((5))~~ (4) Subsection (1) of this section does not apply to the costs incurred for voting devices or machines under RCW 29.04.200.

Sec. 6. RCW 43.84.092 and 1992 c 235 s 4 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice

assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local sales and use tax account, the medical aid account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system plan II account, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (2)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the

Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, and the urban arterial trust account.

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

NEW SECTION. Sec. 7. A new section is added to chapter 43.88 RCW to read as follows:

The budget document submitted by the governor to the legislature under RCW 43.88.030 shall reflect the state expenditure limit established under chapter 43.135 RCW and shall not propose expenditures in excess of that limit.

NEW SECTION. Sec. 8. No fee may increase in any fiscal year by a percentage in excess of the fiscal growth factor for that fiscal year without prior legislative approval.

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

- (1) RCW 43.88.520 and 1981 c 280 s 1;
- (2) RCW 43.88.525 and 1991 sp.s. c 13 s 13, 1985 c 57 s 52, & 1981 c 280 s 2;
- (3) RCW 43.88.530 and 1982 1st ex.s. c 36 s 2 & 1981 c 280 s 3;
- (4) RCW 43.88.535 and 1982 1st ex.s. c 36 s 3 & 1981 c 280 s 4;
- (5) RCW 43.88.540 and 1984 c 138 s 11 & 1981 c 280 s 5;
- (6) RCW 43.135.020 and 1980 c 1 s 2;
- (7) RCW 43.135.030 and 1980 c 1 s 3;
- (8) RCW 43.135.040 and 1980 c 1 s 4;
- (9) RCW 43.135.050 and 1980 c 1 s 5;
- (10) RCW 43.135.070 and 1980 c 1 s 7;
- (11) RCW 43.135.900 and 1980 c 1 s 8; and
- (12) RCW 43.135.901 and 1980 c 1 s 9.

NEW SECTION. Sec. 10. This chapter may be known and cited as the taxpayer protection act.

NEW SECTION. Sec. 11. Sections 2, 3, 4, 8, 9, and 10 of this act are each added to chapter 43.135 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.

NEW SECTION. Sec. 13. (1) After the effective date of this section, the state may raise existing taxes, impose new taxes as authorized by law, or make revenue-neutral tax shifts only with approval of a majority of the voters at a

November general election. The requirement for a vote at a November general election is in addition to any other requirements established by law.

(2) This section expires on July 1, 1995.

NEW SECTION. Sec. 14. (1) Sections 8 and 13 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 1 through 7 and 9 through 12 of this act shall take effect July 1, 1995.

Originally filed in Office of Secretary of State March 5, 1993.

Approved by the People of the State of Washington in the General Election on November 2, 1993.

CHAPTER 3

[Substitute Senate Bill 6073]

UNEMPLOYMENT COMPENSATION—REVISIONS RELATING TO EXTENDED BENEFITS, BASE YEAR, AND THE MASSAGE THERAPIST EXEMPTION

AN ACT Relating to unemployment compensation; amending RCW 50.04.020 and 50.04.223; creating a new section; providing effective dates; and declaring an emergency.

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

Sec. 1. RCW 50.04.020 and 1987 c 278 s 1 are each amended to read as follows:

"Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. ~~((Wage items not processed at the time of application shall become available to the claim as they are added to department systems. The department shall not be required to make employer contacts or take other actions that would not be applicable to claims based on the first four of the last five completed calendar quarters.))~~ The department shall promptly contact employers to request assistance in obtaining wage information for the last completed calendar quarter if it has not been reported at the time of initial application.

Sec. 2. RCW 50.04.223 and 1993 c 167 s 1 are each amended to read as follows:

The term "employment" does not include services performed by a massage practitioner licensed under chapter 18.108 RCW in a massage business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed.

This exemption does not include services performed by a massage practitioner for an employer under chapter 50.44 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 50.22 RCW to read as follows:

Supplemental additional benefits shall be available to individuals who, under this chapter, had a balance of extended benefits available after payments up to and including the week ending February 26, 1994.

(1) Total supplemental additional benefits payable shall be equal to the extended benefit balance remaining after extended benefit payments for up to and including the week ending February 26, 1994, and shall be paid at the same weekly benefit amount.

(2) The week ending March 5, 1994, is the first week for which supplemental additional benefits are payable.

(3) Supplemental additional benefits shall be paid under the same terms and conditions as extended benefits.

(4) Supplemental additional benefits are not payable for weeks more than one year beyond the end of the benefit year of the regular claim.

(5) Weeks of supplemental additional benefits may not be paid for weeks that begin after the start of a new extended benefit period, or any totally federally funded benefit program with eligibility criteria and benefits comparable to additional benefits.

(6) Weeks of supplemental additional benefits may not be paid for weeks of unemployment beginning after December 31, 1995.

(7) The department shall seek federal funding to reimburse the state for the supplemental additional benefits paid under this section. Any federal funds received by the state for reimbursement shall be deposited in the unemployment trust fund solely for the payment of benefits under this title.

NEW SECTION. Sec. 4. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

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

NEW SECTION. **Sec. 6.** (1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 3, 1994.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1994.

(3) Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 26, 1994.

Passed the House February 25, 1994.

Approved by the Governor February 26, 1994.

Filed in Office of Secretary of State February 26, 1994.

CHAPTER 4

[Substitute House Bill 2443]

HEALTH CARE COVERAGE FOR SEASONAL WORKERS

AN ACT Relating to employer-sponsored health benefits coverage for seasonal workers; amending RCW 43.72.010, 43.72.060, and 43.72.040; and adding a new section to chapter 43.72 RCW.

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

Sec. 1. RCW 43.72.010 and 1993 c 494 s 1 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Certified health plan" or "plan" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, or an entity certified in accordance with RCW 48.43.020 through 48.43.120.

(2) "Chair" means the presiding officer of the Washington health services commission.

(3) "Commission" or "health services commission" means the Washington health services commission.

(4) "Community rate" means the rating method used to establish the premium for the uniform benefits package adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region and family size as determined by the commission.

(5) "Continuous quality improvement and total quality management" means a continuous process to improve health services while reducing costs.

(6) "Employee" means a resident who is in the employment of an employer, as defined by chapter 50.04 RCW.

(7) "Enrollee" means any person who is a Washington resident enrolled in a certified health plan.

(8) "Enrollee point of service cost-sharing" means amounts paid to certified health plans directly providing services, health care providers, or health care facilities by enrollees for receipt of specific uniform benefits package services, and may include copayments, coinsurance, or deductibles, that together must be actuarially equivalent across plans and within overall limits established by the commission.

(9) "Enrollee premium sharing" means that portion of the premium that is paid by enrollees or their family members.

(10) "Federal poverty level" means the federal poverty guidelines determined annually by the United States department of health and human services or successor agency.

(11) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health (~~care~~) care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include Christian Science sanatoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW and chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health insurance purchasing cooperative" or "cooperative" means a member-owned and governed nonprofit organization certified in accordance with RCW 43.72.080 and 48.43.160.

(14) "Long-term care" means institutional, residential, outpatient, or community-based services that meet the individual needs of persons of all ages who are limited in their functional capacities or have disabilities and require assistance with performing two or more activities of daily living for an extended or indefinite period of time. These services include case management, protective

supervision, in-home care, nursing services, convalescent, custodial, chronic, and terminally ill care.

(15) "Major capital expenditure" means any project or expenditure for capital construction, renovations, or acquisition, including medical technological equipment, as defined by the commission, costing more than one million dollars.

(16) "Managed care" means an integrated system of insurance, financing, and health services delivery functions that: (a) Assumes financial risk for delivery of health services and uses a defined network of providers; or (b) assumes financial risk for delivery of health services and promotes the efficient delivery of health services through provider assumption of some financial risk including capitation, prospective payment, resource-based relative value scales, fee schedules, or similar method of limiting payments to health care providers.

(17) "Maximum enrollee financial participation" means the income-related total annual payments that may be required of an enrollee per family who chooses one of the three lowest priced uniform benefits packages offered by plans in a geographic region including both premium sharing and enrollee point of service cost-sharing.

(18) "Persons of color" means Asians/Pacific Islanders, African, Hispanic, and Native Americans.

(19) "Premium" means all sums charged, received, or deposited by a certified health plan as consideration for a uniform benefits package or the continuance of a uniform benefits package. Any assessment, or any "membership," "policy," "contract," "service," or similar fee or charge made by the certified health plan in consideration for the uniform benefits package is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point of service cost-sharing.

(20) "Qualified employee" means an employee who is employed at least thirty hours during a week or one hundred twenty hours during a calendar month.

(21) "Registered employer health plan" means a health plan established by a private employer of more than seven thousand active employees in this state solely for the benefit of such employees and their dependents and that meets the requirements of RCW 43.72.120. Nothing contained in this subsection shall be deemed to preclude the plan from providing benefits to retirees of the employer.

~~(22) ("Seasonal employee" means any person who works:~~

~~(a) For one or more employers during the calendar year;~~

~~(b) For six months or less, per year; and~~

~~(c) For at least half-time per month, during a designated season, within the same industry sector, designated by the commission, including food processing, agricultural production, agricultural harvesting, plantation Christmas tree planting, and tree planting on timber land.~~

~~(23))~~ "Supplemental benefits" means those appropriate and effective health services that are not included in the uniform benefits package or that expand the type or level of health services available under the uniform benefits package and

that are offered to all residents in accordance with the provisions of RCW 43.72.160 and 43.72.170.

~~((24))~~ (23) "Technology" means the drugs, devices, equipment, and medical or surgical procedures used in the delivery of health services, and the organizational or supportive systems within which such services are provided. It also means sophisticated and complicated machinery developed as a result of ongoing research in the basic biological and physical sciences, clinical medicine, electronics, and computer sciences, as well as specialized professionals, medical equipment, procedures, and chemical formulations used for both diagnostic and therapeutic purposes.

~~((25))~~ (24) "Uniform benefits package" or "package" means those appropriate and effective health services, defined by the commission under RCW 43.72.130, that must be offered to all Washington residents through certified health plans.

~~((26))~~ (25) "Washington resident" or "resident" means a person who intends to reside in the state permanently or indefinitely and who did not move to Washington for the primary purpose of securing health services under RCW 43.72.090 through 43.72.240, 43.72.300, 43.72.310, 43.72.800, and chapters 48.43 and 48.85 RCW. "Washington resident" also includes people and their accompanying family members who are residing in the state for the purpose of engaging in employment for at least one month, who did not enter the state for the primary purpose of obtaining health services. The confinement of a person in a nursing home, hospital, or other medical institution in the state shall not by itself be sufficient to qualify such person as a resident.

Sec. 2. RCW 43.72.060 and 1993 c 492 s 404 are each amended to read as follows:

(1)(a) The chair shall appoint an advisory committee with balanced representation from consumers, business, government, labor, certified health plans, practicing health care providers, health care facilities, and health services researchers reflecting ethnic and racial diversity. In addition, the chair may appoint special committees for specified periods of time.

(b) The chair shall also appoint a five-member health services effectiveness committee whose members possess a breadth of experience and knowledge in the treatment, research, and public and private funding of health care services. The committee shall meet at the call of the chair. The health services effectiveness committee shall advise the commission on: (i) Those health services that may be determined by the commission to be appropriate and effective; (ii) use of technology and practice indicators; (iii) the uniform benefits package; and (iv) rules that insurers and certified health plans must use to determine whether a procedure, treatment, drug, or other health service is no longer experimental or investigative.

(c) The commission shall also appoint a small business advisory committee composed of seven owners of businesses with twenty-five or fewer full-time equivalent employees reflecting ethnic and racial diversity, to assist the

commission in development of the small business economic impact statement and the small business assistance program, as provided in RCW 43.72.140 and 43.72.240.

(d) The commission shall also appoint an organized labor advisory committee composed of seven representatives of employee organizations representing employees of public or private employers. The committee shall assist the commission in conducting the evaluation of Taft-Hartley health care trusts and self-insured employee health benefits plans, as provided in RCW 43.72.040(26), and shall advise the commission on issues related to the impact of chapter 492, Laws of 1993 on negotiated health benefits agreements and other employee health benefits plans.

(e) The commission shall appoint a seasonal employment advisory committee composed of equal numbers of seasonal employee and employer representatives to assist the commission in development of coverage mechanisms for seasonal employees and employers and other related issues as provided in section 4 of this act.

(2) Members of committees and panels shall serve without compensation for their services but shall be reimbursed for their expenses while attending meetings on behalf of the commission in accordance with RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 43.72.040 and 1993 c 494 s 2 are each amended to read as follows:

The commission has the following powers and duties:

(1) Ensure that all residents of Washington state are enrolled in a certified health plan to receive the uniform benefits package, regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment, or economic status.

(2) Endeavor to ensure that all residents of Washington state have access to appropriate, timely, confidential, and effective health services, and monitor the degree of access to such services. If the commission finds that individuals or populations lack access to certified health plan services, the commission shall:

(a) Authorize appropriate state agencies, local health departments, community or migrant health clinics, public hospital districts, or other nonprofit health service entities to take actions necessary to assure such access. This includes authority to contract for or directly deliver services described within the uniform benefits package to special populations; or

(b) Notify appropriate certified health plans and the insurance commissioner of such findings. The commission shall adopt by rule standards by which the insurance commissioner may, in such event, require certified health plans in closest proximity to such individuals and populations to extend their catchment areas to those individuals and populations and offer them enrollment.

(3) Adopt necessary rules in accordance with chapter 34.05 RCW to carry out the purposes of chapter 492, Laws of 1993. An initial set of draft rules establishing at least the commission's organization structure, the uniform benefits

package, and standards for certified health plan certification, must be submitted in draft form to appropriate committees of the legislature by December 1, 1994.

(4) Establish and modify as necessary, in consultation with the state board of health and the department of health, and coordination with the planning process set forth in RCW 43.70.520 a uniform set of health services based on the recommendations of the health care cost control and access commission established under House Concurrent Resolution No. 4443 adopted by the legislature in 1990.

(5) Establish and modify as necessary the uniform benefits package as provided in RCW 43.72.130, which shall be offered to enrollees of a certified health plan. The benefit package shall be provided at no more than the maximum premium specified in subsection (6) of this section.

(6)(a) Establish for each year a community-rated maximum premium for the uniform benefits package that shall operate to control overall health care costs. The maximum premium cost of the uniform benefits package in the base year 1995 shall be established upon an actuarial determination of the costs of providing the uniform benefits package and such other cost impacts as may be deemed relevant by the commission. Beginning in 1996, the growth rate of the premium cost of the uniform benefits package for each certified health plan shall be allowed to increase by a rate no greater than the average growth rate in the cost of the package between 1990 and 1993 as actuarially determined, reduced by two percentage points per year until the growth rate is no greater than the five-year rolling average of growth in Washington per capita personal income, as determined by the office of financial management.

(b) In establishing the community-rated maximum premium under this subsection, the commission shall review various methods for establishing the community-rated maximum premium and shall recommend such methods to the legislature by December 1, 1994.

The commission may develop and recommend a rate for employees that provides nominal, if any, variance between the rate for individual employees and employees with dependents to minimize any economic incentive to an employer to discriminate between prospective employees based upon whether or not they have dependents for whom coverage would be required.

(c) If the commission adds or deletes services or benefits to the uniform benefits package in subsequent years, it may increase or decrease the maximum premium to reflect the actual cost experience of a broad sample of providers of that service in the state, considering the factors enumerated in (a) of this subsection and adjusted actuarially. The addition of services or benefits shall not result in a redetermination of the entire cost of the uniform benefits package.

(d) The level of state expenditures for the uniform benefits package shall be limited to the appropriation of funds specifically for this purpose.

(7) Determine the need for medical risk adjustment mechanisms to minimize financial incentives for certified health plans to enroll individuals who present lower health risks and avoid enrolling individuals who present higher health

risks, and to minimize financial incentives for employer hiring practices that discriminate against individuals who present higher health risks. In the design of medical risk distribution mechanisms under this subsection, the commission shall (a) balance the benefits of price competition with the need to protect certified health plans from any unsustainable negative effects of adverse selection; (b) consider the development of a system that creates a risk profile of each certified health plan's enrollee population that does not create disincentives for a plan to control benefit utilization, that requires contributions from plans that enjoy a low-risk enrollee population to plans that have a high-risk enrollee population, and that does not permit an adjustment of the premium charged for the uniform benefits package or supplemental coverage based upon either receipt or contribution of assessments; and (c) consider whether registered employer health plans should be included in any medical risk adjustment mechanism. Proposed medical risk adjustment mechanisms shall be submitted to the legislature as provided in RCW 43.72.180.

(8) Design a mechanism to assure minors have access to confidential health care services as currently provided in RCW 70.24.110 and 71.34.030.

(9) Monitor the actual growth in total annual health services costs.

(10) Monitor the increased application of technology as required by chapter 492, Laws of 1993 and take necessary action to ensure that such application is made in a cost-effective and efficient manner and consistent with existing laws that protect individual privacy.

(11) Establish reporting requirements for certified health plans that own or manage health care facilities, health care facilities, and health care providers to periodically report to the commission regarding major capital expenditures of the plans. The commission shall review and monitor such reports and shall report to the legislature regarding major capital expenditures on at least an annual basis. The Washington health care facilities authority and the commission shall develop standards jointly for evaluating and approving major capital expenditure financing through the Washington health care facilities authority, as authorized pursuant to chapter 70.37 RCW. By December 1, 1994, the commission and the authority shall submit jointly to the legislature such proposed standards. The commission and the authority shall, after legislative review, but no later than June 1, 1995, publish such standards. Upon publication, the authority may not approve financing for major capital expenditures unless approved by the commission.

(12) Establish maximum enrollee financial participation levels. The levels shall be related to enrollee household income.

(13) Establish rules requiring employee enrollee premium sharing, as defined in RCW 43.72.010(9), be paid through deductions from wages or earnings.

(14) For health services provided under the uniform benefits package and supplemental benefits, adopt standards for enrollment, and standardized billing and claims processing forms. The standards shall ensure that these procedures minimize administrative burdens on health care providers, health care facilities,

certified health plans, and consumers. Subject to federal approval or phase-in schedules whenever necessary or appropriate, the standards also shall apply to state-purchased health services, as defined in RCW 41.05.011.

~~((14))~~ (15) Propose that certified health plans adopt certain practice indicators or risk management protocols for quality assurance, utilization review, or provider payment. The commission may consider indicators or protocols recommended according to RCW 43.70.500 for these purposes.

~~((15))~~ (16) Propose other guidelines to certified health plans for utilization management, use of technology and methods of payment, such as diagnosis-related groups and a resource-based relative value scale. Such guidelines shall be voluntary and shall be designed to promote improved management of care, and provide incentives for improved efficiency and effectiveness within the delivery system.

~~((16))~~ (17) Adopt standards and oversee and develop policy for personal health data and information system as provided in chapter 70.170 RCW.

~~((17))~~ (18) Adopt standards that prevent conflict of interest by health care providers as provided in RCW 18.130.320.

~~((18))~~ (19) At the appropriate juncture and in the fullness of time, consider the extent to which medical research and health professions training activities should be included within the health service system set forth in chapter 492, Laws of 1993.

~~((19))~~ (20) Evaluate and monitor the extent to which racial and ethnic minorities have access ~~((and to to and))~~ to and receive health services within the state, and develop strategies to address barriers to access.

~~((20))~~ (21) Develop standards for the certification process to certify health plans and employer health plans to provide the uniform benefits package, according to the provisions for certified health plans and registered employer health plans under chapter 492, Laws of 1993.

~~((21))~~ (22) Develop rules for implementation of individual and employer participation under RCW 43.72.210 and 43.72.220 specifically applicable to persons who work in this state but do not live in the state or persons who live in this state but work outside of the state. The rules shall be designed so that these persons receive coverage and financial requirements that are comparable to that received by persons who both live and work in the state.

~~((22))~~ (23) After receiving advice from the health services effectiveness committee, adopt rules that must be used by certified health plans, disability insurers, health care service contractors, and health maintenance organizations to determine whether a procedure, treatment, drug, or other health service is no longer experimental or investigative.

~~((23))~~ (24) Establish a process for purchase of uniform benefits package services by enrollees when they are out-of-state.

~~((24))~~ (25) Develop recommendations to the legislature as to whether state and school district employees, on whose behalf health benefits are or will be purchased by the health care authority pursuant to chapter 41.05 RCW, should

have the option to purchase health benefits through health insurance purchasing cooperatives on and after July 1, 1997. In developing its recommendations, the commission shall consider:

(a) The impact of state or school district employees purchasing through health insurance purchasing cooperatives on the ability of the state to control its health care costs; and

(b) Whether state or school district employees purchasing through health insurance purchasing cooperatives will result in inequities in health benefits between or within groups of state and school district employees.

~~((25))~~ (26) Establish guidelines for providers dealing with terminal or static conditions, taking into consideration the ethics of providers, patient and family wishes, costs, and survival possibilities.

~~((26))~~ (27) Evaluate the extent to which Taft-Hartley health care trusts provide benefits to certain individuals in the state; review the federal laws under which these trusts are organized; and make appropriate recommendations to the governor and the legislature on or before December 1, 1994, as to whether these trusts should be brought under the provisions of chapter 492, Laws of 1993 when it is fully implemented, and if the commission recommends inclusion of the trusts, how to implement such inclusion.

~~((27) Make appropriate recommendations to the governor and the legislature on or before December 1, 1994, as to how seasonal workers and their employers may be brought under the provisions of chapter 492, Laws of 1993 when it is fully implemented, and with particular attention to the financial impact on seasonal workers and their employers. Until such time this study has been completed and the legislature has taken affirmative action, RCW 43.72.220 shall not apply to seasonal workers or their employers.))~~

(28) Evaluate whether Washington is experiencing a higher percentage in immigration of residents from other states and territories than would be expected by normal trends as a result of the availability of unsubsidized and subsidized health care benefits for all residents and report to the governor and the legislature their findings.

(29) In developing the uniform benefits package and other standards pursuant to this section, consider the likelihood of the establishment of a national health services plan adopted by the federal government and its implications.

(30) Evaluate the effect of reforms under chapter 492, Laws of 1993 on access to care and economic development in rural areas.

To the extent that the exercise of any of the powers and duties specified in this section may be inconsistent with the powers and duties of other state agencies, offices, or commissions, the authority of the commission shall supersede that of such other state agency, office, or commission, except in matters of personal health data, where the commission shall have primary data system policy-making authority and the department of health shall have primary responsibility for the maintenance and routine operation of personal health data systems.

NEW SECTION. Sec. 4. A new section is added to chapter 43.72 RCW to read as follows:

(1) As used in this section, "seasonal employer" means an employer whose business is in one or more of the following standard industry classifications: Cash grains, field crops except cash grains, vegetables and melons, fruits and nuts, dairy farms, horticulture specialties, general farms-primarily crops, crop services, animal services except veterinary, timber tracts, forestry services, canned, frozen, and preserved fruits and vegetables, farm produce-raw material, and fresh fruits and vegetables. Additional industry classifications may be included by the commission.

(2) The commission shall, in consultation with the seasonal employment advisory committee established pursuant to RCW 43.72.060(1)(e):

(a) Define seasonal employee;

(b) Conduct an analysis of the financial impact of health insurance coverage on seasonal employees and their employers, including analysis of the extent to which existing funding sources that currently subsidize health services costs for low-income seasonal workers can be utilized, and the feasibility of establishing a centralized pool or depository to finance such coverage;

(c) Determine the extent to which the coverage mechanisms of this chapter should be modified, if at all, to meet the unique characteristics and needs of seasonal employees and their employers. In making the determination under this subsection:

(i) Seasonal employees shall have the same base level of benefits, and be subject to the same point of service cost-sharing and premium contribution policies as other employees, consistent with the income-sensitive requirements developed by the commission pursuant to RCW 43.72.130;

(ii) Employers and employees should contribute to the costs of health benefits coverage for seasonal employees and their dependents at a rate that is as affordable for seasonal employees and their employers as for nonseasonal employers and employees. The minimum hourly rate paid by seasonal employers towards their seasonal employees' health insurance coverage shall not have the effect of increasing the employers' monthly contribution toward seasonal employees' health insurance coverage to more than the required fifty percent of the cost of the lowest priced uniform benefits package. The minimum hourly payment rate shall be calculated on the basis of a one hundred twenty hour month, and shall be paid by employers on the first thirty hours of each week worked by a seasonal employee;

(iii) The following principles shall guide the commission's deliberations with respect to development of a mechanism to determine the date upon which an employer's participation under RCW 43.72.220 begins:

(A) The clear legislative intent of this chapter is to minimize any adverse economic impact of employer participation on small employers, as evidenced by establishment of the small business advisory committee in RCW 43.72.060, establishment of the small firm financial assistance program in RCW 43.72.240,

the requirement in RCW 43.72.140 that a small business economic impact statement be prepared by the commission, and phased-in implementation of employer participation requirements based on employer size;

(B) The unique nature of seasonal industries results in great variations in the number of individuals employed in those industries over the course of a year. Any mechanism developed by the commission shall attempt to address this issue in a manner that: Minimizes the potential for peaks and valleys in employment to disproportionately influence the date upon which an employer's participation under RCW 43.72.220 begins; does not result in overcounting or undercounting qualified employees; and ensures equitable treatment of employers and employees across industries;

(iv) Consideration shall be given to health services access and delivery issues unique to seasonal employees;

(v) Consider the appropriateness of using the depository established pursuant to RCW 43.72.230 to administer all or part of the system of seasonal employees' health insurance coverage.

(3) In undertaking these tasks, the commission shall give strong consideration to the following principles:

(a) Every effort shall be made to minimize the administrative burden on seasonal employees and seasonal employers; and

(b) No new state agency should be created.

Passed the House February 10, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 2, 1994.

Filed in Office of Secretary of State March 2, 1994.

CHAPTER 5

[Senate Bill 6345]

**DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC
DEVELOPMENT—MERGER DATE ADVANCED**

AN ACT Relating to expediting the implementation of the merger of the departments of community development and trade and economic development; amending RCW 43.330.902; amending 1993 c 280 s 8 (uncodified); providing an effective date; and declaring an emergency.

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

Sec. 1. 1993 c 280 s 8 (uncodified) is amended to read as follows:

(1) The director of the department of trade and economic development and the director of the department of community development shall, by November 15, 1993, jointly submit a plan to the governor for the consolidation and smooth transition of the department of trade and economic development and the department of community development into the department of community, trade, and economic development so that the department will operate as a single entity on ~~((July))~~ March 1, 1994.

(2) The plan shall include, but is not limited to, the following elements:

(a) Strategies for combining the existing functions and responsibilities of both agencies into a coordinated and unified department including a strategic plan for each major program area that includes implementation steps, evaluation measures, and methods for collaboration among programs;

(b) Recommendations for any changes in existing programs and functions of both agencies, including new initiatives and possible transfer of programs and functions to and from other departments;

(c) Implementation steps necessary to bring about operation of the combined department as a single entity;

(d) Benchmarks by which to measure progress and to evaluate the performance and effectiveness of the department's efforts; and

(e) Strategies for coordinating and maximizing federal, state, local, international, and private sector support for community and economic development efforts within the state.

(3) In developing this plan, the directors shall establish an advisory committee of representatives of groups using services and programs of both departments. The advisory committee shall include representatives of cities, counties, port districts, small and large businesses, labor unions, associate development organizations, low-income housing interests, housing industry, Indian tribes, community action programs, public safety groups, nonprofit community and development organizations, international trade organizations, minority and women business organizations, and any other organizations the directors determine should have input to the plan.

Sec. 2. RCW 43.330.902 and 1993 c 280 s 86 are each amended to read as follows:

Sections 1 through 7, 9 through 79, 82, and 83 of this act shall take effect ~~((July))~~ March 1, 1994.

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 March 1, 1994.

Passed the Senate February 11, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 2, 1994.

Filed in Office of Secretary of State March 2, 1994.

CHAPTER 6

[Senate Bill 6346]

DEPARTMENT OF FISH AND WILDLIFE—MERGER DATE ADVANCED

AN ACT Relating to expediting the implementation of the merger of the departments of fisheries and wildlife into the department of fish and wildlife; amending RCW 43.300.900; amending 1993 sp.s. c 2 s 7 (uncodified); amending 1993 sp.s. c 2 s 79 (uncodified); repealing RCW 75.54.006; providing an effective date; and declaring an emergency.

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

Sec. 1. 1993 sp.s. c 2 s 7 (uncodified) is amended to read as follows:

The director of fisheries and the director of wildlife shall, by November 15, 1993, jointly submit a plan to the governor for the consolidation and smooth transition of the department of fisheries and the department of wildlife into the department of fish and wildlife so that the department of fish and wildlife will operate as a single entity on ~~((July))~~ March 1, 1994. The wildlife commission shall make recommendations for the consolidation of the agencies to the governor and the two directors. The fish and wildlife commission shall review its area of responsibility in the consolidated agency and submit recommendations by December 1, 1994, to the governor and the appropriate standing committees of the legislature on any necessary changes in its statutory authority. The legislative budget committee shall study the role of the fish and wildlife commission and prepare a report on recommended changes to the governor and the appropriate standing committees of the legislature by December 1, 1994.

Sec. 2. 1993 sp.s. c 2 s 79 (uncodified) is amended to read as follows:

On ~~((July))~~ March 1, 1994, the state treasurer shall follow the recommendations of the director of financial management on the disbursement of funds from the state wildlife fund to the department of fish and wildlife solely for the purposes of funding programs for wildlife and game fish. Beginning March 1, 1994, funds from the state wildlife fund shall be used only for the department of fish and wildlife ~~((after June 30, 1994))~~.

NEW SECTION. Sec. 3. RCW 75.54.006 and 1993 sp.s. c 2 s 101 are each repealed.

Sec. 4. RCW 43.300.900 and 1993 sp.s. c 2 s 102 are each amended to read as follows:

Sections 1 through 6, 8 through 59, and 61 through 79 ~~((of this act))~~, chapter 2, Laws of 1993 sp.s. shall take effect ~~((July))~~ March 1, 1994.

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 March 1, 1994.

Passed the Senate February 11, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 2, 1994.

Filed in Office of Secretary of State March 2, 1994.

CHAPTER 7

[Senate Bill 6516]

WARREN FEATHERSTONE REID AWARD FOR EXCELLENCE IN HEALTH CARE

AN ACT Relating to the award for excellence in health care; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature recognizes the critical importance of ensuring that all Washington residents have access to quality and affordable health care. The legislature further recognizes that substantial improvements can be made in health care delivery when providers, including health care facilities, are encouraged to continuously strive for excellence in quality management practices, value, and consumer satisfaction. The legislature finds that when centers of quality are highlighted and honored publicly they become examples for other health care providers to emulate, thereby further promoting the implementation of improved health care delivery processes.

NEW SECTION. Sec. 2. There is created an award to honor and recognize cost-effective and quality health care services. This award shall be known as the "Warren Featherstone Reid Award for Excellence in Health Care."

NEW SECTION. Sec. 3. The governor, in conjunction with the secretary of health, shall identify and honor health care providers and facilities in Washington state who exhibit exceptional quality and value in the delivery of health services. The award shall be given annually consistent with the availability of qualified nominees. The secretary may appoint an advisory committee to assist in the selection of nominees, if necessary.

Passed the Senate March 6, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 17, 1994.

Filed in Office of Secretary of State March 17, 1994.

CHAPTER 8

[Substitute Senate Bill 6006]

JUDICIAL INFORMATION SYSTEM ACCOUNT—FUNDING PROVISIONS REVISED

AN ACT Relating to the judicial information system; amending RCW 2.68.020; adding a new section to chapter 2.68 RCW; and declaring an emergency.

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

Sec. 1. RCW 2.68.020 and 1989 c 364 s 2 are each amended to read as follows:

There is created an account in the custody of the state treasurer to be known as the judicial information system account. The office of the administrator for the courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system and moneys as specified in section 2 of this act for the purposes of providing judicial information system access to noncourt users

and providing an adequate level of automated services to the judiciary. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. ((The account shall be credited with all receipts from the rental, sale, or distribution of supplies, equipment, computer software, products, and services rendered to in-state noncourt users and all out-of-state users and licensees of the judicial information system)) The account shall be used for the acquisition of equipment, software, supplies, services, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies, and equipment, including the payment of principal and interest on items paid in installments.

NEW SECTION. Sec. 2. A new section is added to chapter 2.68 RCW to read as follows:

(1) To support the judicial information system account provided for in RCW 2.68.020, the supreme court may provide by rule for an increase in fines, penalties, and assessments, and the increased amount shall be forwarded to the state treasurer for deposit in the account:

(a) Pursuant to the authority of RCW 46.63.110(2), the sum of ten dollars to any penalty collected by a court pursuant to supreme court infraction rules for courts of limited jurisdiction;

(b) Pursuant to RCW 3.62.060, a mandatory appearance cost in the initial sum of ten dollars to be assessed on all defendants; and

(c) Pursuant to RCW 46.63.110(5), a ten dollar assessment for each account for which a person requests a time payment schedule.

(2) Notwithstanding a provision of law or rule to the contrary, the assessments provided for in this section may not be waived or suspended and shall be immediately due and payable upon forfeiture, conviction, deferral of prosecution, or request for time payment, as each shall occur.

(3) The supreme court is requested to adjust these assessments for inflation.

****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.***

*Sec. 3 was vetoed, see message at end of chapter.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 21, 1994.

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

"I am returning herewith, without my approval as to Section 3, Substitute Senate Bill No. 6006 entitled:

"AN ACT Relating to the judicial information system;"

This bill amends current law relating to the judicial information system and allows the Supreme Court to increase by rule fines, penalties and assessments for deposit into the judicial information system account. Funds from these increases will be dedicated to upgrading the computer information network utilized by the courts.

Section 3 of this bill is an emergency clause. Immediate implementation as provided by this section would not provide sufficient time for all jurisdictions to effect changes necessary to fully implement this legislation. For this reason, I have vetoed section 3.

With the exception of section 3, Substitute Senate Bill No. 6006 is approved."

CHAPTER 9

[House Bill 1133]

UNLAWFUL CONVERSION AND LEAVING WITHOUT PAYING—ASSIGNMENT OF CLAIMS AUTHORIZED

AN ACT Relating to assignment of claims for unlawful conversion and unlawful leaving without paying; and amending RCW 4.24.230.

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

Sec. 1. RCW 4.24.230 and 1987 c 353 s 1 are each amended to read as follows:

(1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the

retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments(~~(-but not)~~) and claims(~~(-)~~) arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW (~~(or RCW 9.45.040)~~) shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) (~~(or (2))~~) or (2) of this section.

Passed the House January 19, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 10

[Substitute House Bill 1339]

MUNICIPAL COURT COMMISSIONERS—APPOINTMENT AND QUALIFICATIONS

AN ACT Relating to court commissioners in municipal court; and adding a new section to chapter 3.50 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 3.50 RCW to read as follows:

One or more court commissioners may be appointed by a judge of the municipal court. Each commissioner holds office at the pleasure of the appointing judge. A commissioner authorized to hear or dispose of cases must

be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.

A commissioner need not be a resident of the city or of the county in which the municipal court is created. When a court commissioner has not been appointed and the municipal court is presided over by a part-time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.

Passed the House February 10, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 11

[House Bill 2138]

WASHINGTON STATE UNIVERSITY RODENT CONTROL RESPONSIBILITIES ELIMINATED

AN ACT Relating to rodent control; and repealing RCW 17.16.010, 17.16.020, 17.16.030, 17.16.040, 17.16.050, 17.16.060, 17.16.070, 17.16.080, 17.16.090, 17.16.100, 17.16.110, and 17.16.130.

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

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

- (1) RCW 17.16.010 and 1921 c 140 s 1;
- (2) RCW 17.16.020 and 1921 c 140 s 3;
- (3) RCW 17.16.030 and 1921 c 140 s 4;
- (4) RCW 17.16.040 and 1921 c 140 s 7;
- (5) RCW 17.16.050 and 1921 c 140 s 5;
- (6) RCW 17.16.060 and 1921 c 140 s 2;
- (7) RCW 17.16.070 and 1921 c 140 s 8;
- (8) RCW 17.16.080 and 1921 c 140 s 9;
- (9) RCW 17.16.090 and 1921 c 140 s 10;
- (10) RCW 17.16.100 and 1921 c 140 s 11;
- (11) RCW 17.16.110 and 1988 c 202 s 22, 1971 c 81 s 57, & 1921 c 140 s 12; and
- (12) RCW 17.16.130 and 1950 ex.s. c 19 s 1 & 1921 c 140 s 13.

Passed the House February 4, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 12

[House Bill 2159]

SKOKOMISH TRIBAL LANDS—RETROCESSION OF CRIMINAL JURISDICTION PROCEDURE

AN ACT Relating to jurisdiction over Skokomish tribal lands; and amending RCW 37.12.100, 37.12.110, and 37.12.120.

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

Sec. 1. RCW 37.12.100 and 1988 c 108 s 1 are each amended to read as follows:

It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, or Colville Indian reservation, the established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140.

Sec. 2. RCW 37.12.110 and 1988 c 108 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation((?))" or "Colville Indian reservation," "Quileute reservation((?))" or "Quileute Indian reservation," "Chehalis reservation((?))" or "Chehalis Indian reservation," "Swinomish reservation((?))" or "Swinomish Indian reservation," or "Skokomish reservation" or "Skokomish Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation boundaries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, ((?)) Swinomish, Skokomish tribe" means the confederated tribes of the Colville

reservation or the tribe of the Quileute, Chehalis, ~~((or))~~ Swinomish, or Skokomish reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, ~~((or))~~ Swinomish, or Skokomish tribe.

Sec. 3. RCW 37.12.120 and 1988 c 108 s 3 are each amended to read as follows:

Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, ~~((or))~~ Swinomish, or Skokomish tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, ~~((and))~~ Swinomish, and Skokomish tribes shall not exercise criminal or civil jurisdiction over non-Indians.

Passed the House February 10, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 13

[Substitute House Bill 2170]

SPECIAL SERVICES DEMONSTRATION PROJECTS—REVISIONS

AN ACT Relating to special services demonstration projects; amending RCW 28A.630.845, 28A.630.850, 28A.630.825, 28A.630.830, and 28A.630.840; repealing RCW 28A.630.851; and declaring an emergency.

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

Sec. 1. RCW 28A.630.845 and 1992 c 180 s 3 are each amended to read as follows:

(1) The legislature finds that the state system of funding handicapped education has fiscal incentives to label children as handicapped and that unnecessary labeling can be detrimental to children. The legislature encourages demonstration projects that provide needed services without unnecessary labeling. To test this approach, the legislature intends to maintain the funding level for innovative special services programs that reduce the incidence of unnecessary labeling.

(2) School districts may propose demonstration projects under this ~~((section))~~ subsection to provide needed services and achieve major reductions in the

percentage of district students labeled as handicapped in one or more specified categories. State handicapped funding for districts with such projects shall be based for the duration of the project (~~and for two years after the end of the project~~) on the average percentage of the kindergarten through twelfth grade enrollment in the specified categories (~~during the 1991-92 school year or, for projects approved after April 1, 1992,~~) during the school year before the start of the project.

(3) School districts with specific learning disabled enrollment at or above four percent of the district's kindergarten through twelfth grade enrollment may propose demonstration projects under this subsection to provide needed services and reduce unnecessary labeling to below the four percent level. When the specific learning disabled enrollment is below the four percent level, funding for the district shall be based on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified.

(4) Funding under subsections (2) and (3) of this section is contingent on the following: (a) The funding is spent on children needing special services; and (b) the overall percentage of first through twelfth grade students in the district labeled as handicapped declines each year of the project (~~after the 1991-92 school year~~), excluding handicapped students who transfer into the district.

~~((4) School districts with approved demonstration projects that wish to convert to a project under this section shall by May 1, 1992, notify the selection advisory committee and the superintendent of public instruction and propose appropriate modifications to the project.~~

~~(5) This section expires September 1, 1997.)~~

Sec. 2. RCW 28A.630.850 and 1991 c 265 s 7 are each amended to read as follows:

~~((Sections 1 through 5 of this act))~~ RCW 28A.630.820 through 28A.630.845 shall expire ((January 1, 1996)) September 1, 2001.

NEW SECTION. Sec. 3. RCW 28A.630.851 and 1992 c 180 s 4 are each repealed.

Sec. 4. RCW 28A.630.825 and 1991 c 265 s 2 are each amended to read as follows:

The superintendent of public instruction shall:

(1) ~~((Make ten))~~ Approve fifteen to twenty-five ~~((awards for))~~ demonstration projects in individual school districts and cooperatives, including at least seven projects approved after the effective date of this section;

(2) Make awards for in-service training of teachers and other staff;

(3) Provide technical assistance;

(4) Grant waivers from state rules needed to implement the projects, or request such waivers to be granted by the appropriate agency;

~~(5) ((Contract with school districts for demonstration projects and make contract payments in accordance with RCW 28A.630.820 through 28A.630.840;~~

- ~~(6))~~ Perform or contract for an evaluation of the projects;
~~((7))~~ (6) Confer on the evaluation design with the selection advisory committee; and
~~((8))~~ (7) Submit to the legislature an interim report on the evaluation by December 31, 1993, and a final report by December 31, 1995.

Sec. 5. RCW 28A.630.830 and 1991 c 265 s 3 are each amended to read as follows:

(1) The selection advisory committee is created. The committee shall be composed of up to three members from the house of representatives, up to three members from the senate, up to two members from the office of the superintendent of public instruction, and one member from each of the following: The office of financial management, Washington state special education coalition, transitional bilingual instruction educators, and Washington education association.

(2) The legislative budget committee and the superintendent of public instruction shall provide staff for the selection advisory committee.

(3) The selection advisory committee shall:

(a) Develop appropriate criteria for selecting demonstration projects;

(b) Issue requests for proposals in accordance with RCW 28A.630.820 through ~~((28A.630.840))~~ 28A.630.845 for demonstration projects ~~((to commence during the 1991-92 and 1992-93 school years))~~;

(c) Review proposals and recommend demonstration projects for approval by the superintendent of public instruction; and

(d) Advise the superintendent of public instruction on the evaluation design ~~((and~~

~~((e) Report each year by December 1st on the status of the demonstration projects to the legislative budget committee and the appropriate policy and fiscal committees of the house of representatives and the senate))~~.

Sec. 6. RCW 28A.630.840 and 1992 c 180 s 2 are each amended to read as follows:

(1) ~~((Project))~~ Funding used in demonstration projects may include state, federal, and local funds, as ~~((specified))~~ determined by the district ~~((in its approved project proposal))~~.

(2) ~~((As a general guideline, subject to refinements in the district proposal and approval by the superintendent of public instruction, the portion of state handicapped funding included as project funding shall be determined as follows:~~

~~((a) If the district serves specific learning disabled students in the project, the portion of the handicapped allocation attributed to specific learning disabled students shall be included, with proportional adjustments if the project serves only part of the district's specific learning disabled population;~~

~~((b) If other handicapped students are served in the project, the portions of the handicapped allocation attributed to those students shall be included, with proportional adjustments if the project serves only part of the district's population in those categories of handicapped students.~~

~~(3))~~ State handicapped allocations shall be calculated for ~~((project))~~ districts with demonstration projects according to the handicapped funding formula in use for other districts, except for the provisions of RCW 28A.630.845 and with the following changes:

(a) ~~((Project))~~ Funding for school districts that had pilot projects approved under section 13, chapter 233, Laws of 1989, and that were participating in projects under this section on January 31, 1992, shall be based for the duration of a project ~~((under RCW 28A.630.820 through 28A.630.840))~~ on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified. The legislature recognizes the importance of continuing and developing the pilot projects.

~~(b) ((School districts with approved projects as of January 31, 1992, may receive funding in each school year for handicapped students served in the project based on the average percentage of the kindergarten through twelfth grade enrollment in the particular handicapped category during the prior three years. School districts that wish to exercise this option shall notify the selection advisory committee and the superintendent of public instruction by May 1, 1992.~~

~~(e))~~ The funding percentages for districts with demonstration projects specified in (a) of this subsection and in RCW 28A.630.845 shall be used to adjust basic education allocations under RCW 28A.150.260 and learning assistance program allocations under RCW 28A.165.070.

~~((d))~~ (c) State handicapped allocations ~~((under subsection (2) of this section))~~ up to the level required by federal maintenance of effort rules shall be expended for services to handicapped students ~~((in the project))~~. Allocations greater than the amount needed to comply with federal maintenance of effort rules may at the option of the district be designated as noncategorical project funds and may be expended on services to any student served in the project.

~~((4) Federal handicapped allocations may be designated in whole or in part for project use.~~

~~(5))~~ (3) Learning assistance program allocations ~~((may be designated in whole or in part for project use. These allocations))~~ shall be calculated for ~~((project))~~ districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

~~((6))~~ (4) Transitional bilingual program allocations ~~((may be designated in whole or in part for project use. These allocations))~~ shall be calculated for ~~((project))~~ districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

~~((7) Funding under the federal remediation program allocations may be designated in whole or in part for project use.~~

~~(8) Funding from local sources may be designated for project use.~~

~~(9))~~ (5) Expenditures of noncategorical project funds under subsections ~~((3)(d), (5), and (6))~~ (2)(c), (3), and (4) of this section shall be accounted for in new and discrete program or subprogram codes designated by the superintendent of public instruction. The codes shall take effect by September 1, 1991.

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 February 10, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 14

[House Bill 2187]

FIRE DISTRICT MERGERS—PROCEDURE FOR REDUCTION IN NUMBER OF COMMISSIONERS

AN ACT Relating to fire protection districts mergers; and amending RCW 52.06.085.

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

Sec. 1. RCW 52.06.085 and 1992 c 74 s 1 are each amended to read as follows:

(1) Whenever two or more fire protection districts merge, the board of fire commissioners of the merged fire protection district shall consist of all of the ~~((original))~~ fire commissioners of the districts that are merging, including a person who is elected as a fire commissioner of one of the merging districts at that same election that the ballot proposition was approved authorizing the merger, who shall retain the same terms of office they would possess as if the merger had not been approved. The number of members on the board of the merged district shall be reduced to either three or five members as provided in subsections (2) and (3) of this section, depending on whether the district has chosen to eventually have either a three-member or a five-member board under RCW 52.14.020.

(2) The number of members on the board of the merged district shall be reduced by one whenever a fire commissioner resigns from office or a vacancy otherwise occurs on the board, until the number of remaining members is reduced to the number of members that is chosen for the board eventually to have. The reduction of membership on the board shall not be considered to be a vacancy that is to be filled until the number of remaining members is less than the number of members on the board that is chosen for the board eventually to have.

(3) At the next three district general elections ((for fire commissioners)) after the merger is approved, the number of fire commissioners for the merged

district (~~(shall be reduced)~~) that are elected shall be as follows, notwithstanding the number of fire commissioners whose terms expire:

(a) In the first election after the merger, only one position shall be filled, whether the new fire protection district be a three-member district or a five-member district (~~(pursuant to RCW 52.14.020)~~).

(b) In each of the two subsequent elections, one position shall be filled if the new fire protection district is a three-member district and two positions shall be filled if the new fire protection district is a five-member district (~~(pursuant to RCW 52.14.020)~~).

Thereafter, the fire commissioners shall be elected in the same manner as prescribed for such fire protection districts of the state.

~~((2))~~ (4) A ballot proposition to create commissioner districts may be submitted to the voters of the fire protection districts proposed to be merged at the same election the ballot proposition is submitted authorizing the merging of the fire protection districts. The procedure to create commissioner districts shall conform with RCW 52.14.013, except that: (a) Resolutions proposing the creation of commissioner districts must be adopted by unanimous vote of the boards of fire commissioners of each of the fire protection districts that are proposed to be merged; and (b) commissioner districts will be authorized only if the ballot propositions to authorize the merger and to create commissioner districts are both approved. A ballot proposition authorizing the creation of commissioner districts is approved if it is approved by a simple majority vote of the combined voters of all the fire protection districts proposed to be merged. The commissioner districts shall not be drawn until the number of commissioners in the fire protection district has been reduced under subsections (1) through (3) of this section to either three or five commissioners. After this reduction of fire commissioners has occurred the commissioner districts shall be drawn and used for the election of the successor fire commissioners.

Passed the House February 8, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 15

[Substitute House Bill 2191]

MINORITY AND WOMEN-OWNED BUSINESSES—BIDDING PROCEDURE REVISIONS

AN ACT Relating to bidding procedures concerning minority and women-owned businesses; and amending RCW 39.19.070.

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

Sec. 1. RCW 39.19.070 and 1987 c 328 s 4 are each amended to read as follows:

It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned and controlled businesses be

achievable. If necessary to accomplish this intent, contracts (~~shall~~) may be awarded to the next lowest responsible bidder in turn, or all bids may be rejected and new bids obtained, if the lowest responsible bidder does not meet the goals established for a particular contract under this chapter. The dollar value of the total contract used for the calculation of the specific contract goal may be increased or decreased to reflect executed change orders. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

Passed the House February 8, 1994.
Passed the Senate February 26, 1994.
Approved by the Governor March 21, 1994.
Filed in Office of Secretary of State March 21, 1994.

CHAPTER 16

[House Bill 2266]

**PUBLIC WORKS BOARD—APPROPRIATION FOR PROJECTS
RECOMMENDED BY BOARD**

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

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

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

- (1) City of Anacortes—road project—construction of signalized intersections serving the primary industrial area of the city and the primary route to the state ferry terminal serving the San Juan Islands \$322,494
- (2) City of Bellevue—domestic water project—construction of 6,500 linear feet of large diameter transmission main from 11th Avenue N.E. to the Clyde Hill reservoir \$856,000
- (3) Birch Bay Water and Sewer District—domestic water project—construction of a 55,000 linear foot water supply pipeline to convey treated water from the city of Ferndale to the district \$720,000
- (4) Birch Bay Water and Sewer District—domestic water project—replacing 9,400 feet of water distribution system in the Maple Crest residential community and Cottonwood Beach Park residential community \$315,000
- (5) City of Bremerton—storm sewer project—separation of storm and sanitary sewers to relieve significant public health hazard and reduce overflows \$3,500,000
- (6) City of Camas—road project—realignment of approximately 2,400

linear feet of N.W. Sixth Avenue serving downtown business core and replacement of 40-year-old terra cotta sewer line	\$2,000,000
(7) City of Centralia—sanitary sewer project—replacement of leaking sanitary sewers, manholes, and laterals in the public right-of-way	\$876,470
(8) Clark Public Utilities—sanitary sewer project—installation of new clarifiers, new disinfection contact chambers, a new covered headworks, and other improvements to the La Center Sewer Utility	\$499,100
(9) Cross Valley Water District—domestic water project—relocation and upgrade of water mains due to department of transportation project widening State Routes 9 and 522	\$318,500
(10) City of Enumclaw—road project—excavation and crushing of 2,400 linear feet of abandoned 60-inch wood-stave waterline underneath Railroad Street	\$86,905
(11) City of Everett—domestic water project—replacement of approximately 1,800 linear feet of water system transmission lines which traverse the Snohomish River and Ebey Slough	\$3,500,000
(12) City of Federal Way—storm sewer project—construction of a storm water detention/retention facility, recapture of 15 acre-feet of natural storage to prevent flooding, stream bank erosion, water quality degradation, and provide for wetlands protection upstream and downstream of State Route 99	\$897,640
(13) City of Federal Way—storm water project—upgrade of storm water conveyance system, rehabilitation of West Hylebos wetland, and improvement of natural storage capacity of Hylebos Creek	\$657,800
(14) Highline Water District—domestic water project—installation of water filtration equipment at Des Moines well site, installation of rechlorination facilities and associated piping configurations to comply with safe water drinking act requirements	\$1,640,000
(15) City of Hoquiam—road project—widening the roadway along nine blocks of Aberdeen and Pacific Avenues	\$627,450
(16) King County Water District Number 19—domestic water project—construction of a replacement water treatment plant	\$1,706,176
(17) King County Water District Number 54—domestic water project—replacement of water mains along two roadways due to a department of transportation road widening project, hazardous asbestos in water main piping, and inadequate fireflow	\$250,200
(18) King County Water District Number 83—domestic water project—replacement of leaking original water distribution system serving 840 households	\$387,225

- (19) King County Water District Number 107—domestic water project—
upgrade of the Hazelwood Pump Station \$157,500
- (20) King County Water District Number 111—domestic water project—
replacement of approximately 8,500 linear feet of asbestos-concrete
pipe \$1,000,000
- (21) King County Water District Number 119—domestic water project—
construction of a water storage tank \$337,400
- (22) King County Water District Number 119—domestic water project—
installation of 3,000 linear feet of ten-inch diameter water
main \$226,800
- (23) City of Kirkland—sanitary sewer project—replacement of a ten-inch
diameter asbestos-concrete water main along Lake Washington
Boulevard \$1,165,500
- (24) City of Kirkland—domestic water project—replacement of undersized and
aging water line along Lake Washington Boulevard \$1,386,000
- (25) Lake Chelan Reclamation District—domestic water project—
construction of a water filtration plant and related storage and
transmission elements to comply with federal and state water quality
standards \$3,486,700
- (26) City of Longview—road project—replacement of aging and damaged
light poles, and replacement of inefficient signal
controllers \$631,800
- (27) City of Olympia—storm sewer—funding of innovative water
quality treatment process to remove contaminants from Woodard Creek
watershed \$407,760
- (28) Olympic View Water and Sewer District—domestic water project—
replacement of 46,300 linear feet of aging steel water pipe \$243,110
- (29) City of Pullman—domestic water project—replaces obsolete water
system monitoring equipment by adding a supervisory control and data
acquisition (SCADA) system and microcomputer \$168,000
- (30) City of Renton—sanitary sewer project—grouting, pipe lining, and
removal of inflow sources to correct inflow and infiltration concerns in Honey
Creek and South Highlands areas \$600,000
- (31) City of Renton—sanitary sewer—connection of twenty-one single-
family homes with on-site septic systems to sanitary sewer system in zone of the
city's aquifer protection area \$139,677
- (32) Rhodena Beach Water District—domestic water project—purchase of
pipe and a pressure tank to upgrade system and eliminate low water
pressure and limited fire protection capability \$28,560
- (33) City of Seattle—road project—improvements to street and

- pedestrian lighting, traffic and pedestrian signals, sidewalk repair, and addition of bike lane to Second Avenue between Virginia and Vine Streets in the Denny Regrade \$1,000,000
- (34) City of Seattle—road project—improvements to lighting, signals, sidewalks, and new lane markings for traffic channelling along E. Madison Street and 23rd Avenue East \$2,500,000
- (35) Shoreline Water District—domestic water project—replacement of 8,220 lineal feet of undersized and deteriorated water transmission mains and distribution lines \$941,495
- (36) Silverdale Water District Number 16—domestic water project—intertie to connect Dawn Park water system and other satellite systems to current system \$305,420
- (37) Snohomish County—bridge project—loan will provide the last piece of funding for a \$12 million project to replace a bridge and restore wetlands over and along Quilceda Creek \$300,000
- (38) Snohomish County—road project—High Bridge Road realignment near Ricci Creek \$900,000
- (39) Soos Creek Water and Sewer District—sanitary sewer project—replacement of 19,000 linear feet of existing line and lift station improvements along S.E. 256th Street \$3,500,000
- (40) City of Spokane—sanitary sewer project—line existing downtown sewer pipes with a form-to-fit felt lining \$720,000
- (41) City of Spokane—domestic water project—replacement of an aging 24-inch riveted steel water transmission line \$345,600
- (42) City of Tonasket—domestic water project—construction of 9,800 feet of 6-inch, 8-inch, and 12-inch PVC lines \$502,064
- (43) Trentwood Irrigation District Number 3—domestic water—installation of 14,000 linear feet of water line to connect homeowners with district's water system \$618,100
- (44) West Richland—domestic water project—purchase of a 1,000,000 gallon steel water storage facility \$702,626
- (45) West Richland—sanitary sewer project—upgrade of North Sewer Lagoon to meet current standards and eliminate threat to public health and safety \$610,600
- (46) City of Wilbur—sanitary sewer project—rehabilitation of lift station, reduction in infiltration/inflow, and connection of septic systems to main system \$1,008,000
- (47) Willapa Valley Water District—domestic water project—construction of a 200,000 gallon reservoir and install 1,900 lineal feet of transmission line to comply with the requirements of the surface water treatment rule . . \$261,103

(48) City of Yakima—sanitary sewer project—replacement of existing inadequate sewer lines to bring city into compliance with NPDES permit	\$1,481,000
(49) Emergency Public Works Loans—as authorized by RCW 43.155.065	\$1,000,000
Total approved list	\$45,835,775

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

Passed the House February 8, 1994.
 Passed the Senate March 1, 1994.
 Approved by the Governor March 21, 1994.
 Filed in Office of Secretary of State March 21, 1994.

CHAPTER 17

[House Bill 2271]

FUNERAL DIRECTORS AND EMBALMERS—DISCIPLINE AND UNFAIR BUSINESS PRACTICES

AN ACT Relating to funeral director and embalmer disciplinary procedures; amending RCW 18.130.040; reenacting and amending RCW 18.39.175; adding new sections to chapter 18.39 RCW; repealing RCW 18.39.178; and prescribing penalties.

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

Sec. 1. RCW 18.39.175 and 1986 c 259 s 64 and 1985 c 402 s 6 are each reenacted and amended to read as follows:

Each member of the board of funeral directors and embalmers shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in connection with board duties in accordance with RCW 43.03.050 and 43.03.060.

The state board of funeral directors and embalmers shall have the following duties and responsibilities:

- (1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;
- (2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";
- (3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;
- (4) To adopt, promulgate, and enforce reasonable rules. Rules regulating the cremation of human remains and establishing fees and permit requirements shall be adopted in consultation with the cemetery board; (~~and~~)

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board~~((:)); and~~

~~(6) ((To conduct disciplinary proceedings under chapter 18.130 RCW if the licensee has violated that chapter or has committed unprofessional conduct, which includes:~~

~~(a) Solicitation of human dead bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending. This chapter does not prohibit general advertising or the sale of pre-need funeral plans;~~

~~(b) Employment by the licensee of persons known as "cappers," "steerers," or "solicitors" or other persons to obtain funeral directing or embalming business;~~

~~(c) Employment directly or indirectly of any person for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;~~

~~(d) The buying of business by the licensee, his agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants, or employees, for the purpose of securing business;~~

~~(e) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or cemetery;~~

~~(f) Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body without the written consent of next of kin;~~

~~(g) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies;~~

~~(h) Refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to its custody;~~

~~(i) Selling, or offering for sale, a share, certificate, or an interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to purchasers a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public; or~~

~~(j) Knowingly concealing information concerning a violation of this chapter;~~

~~(7)) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal.~~

NEW SECTION. Sec. 2. In addition to the authority specified in this chapter, the board has the following additional authority concerning disciplinary hearings:

(1) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;

(2) To take or cause to be taken depositions and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(3) To compel attendance of witnesses at hearings;

(4) To take emergency action ordering summary suspension of a license, registration, endorsement, or permit, or restriction or limitation of the licensee's, registrant's, or endorsement or permit holder's practice pending proceedings by the board;

(5) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the board shall make the final decision regarding disposition of the license, registration, endorsement, or permit;

(6) To use individual members of the board to direct investigations. However, a member of the board used to direct an investigation may not subsequently participate in the hearing of the case;

(7) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(8) To contract with licensees, registrants, or endorsement or permit holders, or other persons or organizations to provide services necessary for the monitoring and supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional activities are restricted, or who are for an authorized purpose subject to monitoring by the board;

(9) To adopt rules for standards of professional conduct or practice;

(10) To grant or deny license, registration, endorsement, or permit applications, and in the event of a finding of unprofessional conduct by an applicant or license, registration, endorsement, or permit holder, to impose a sanction against a license, registration, endorsement, or permit applicant or license, registration, endorsement, or permit holder provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance must consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license, registration, endorsement, or permit holder may not be required to admit to a violation of the law, nor is the assurance such an admission. Violation of an assurance under this section is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges; and

(13) To revoke, suspend, or take other action provided for by section 12 of this act against licenses, registrations, endorsements, or permits issued under this chapter.

NEW SECTION. Sec. 3. The following shall constitute unprofessional conduct:

(1) Solicitation of dead human bodies by a licensee, registrant, endorsement, or permit holder, or agent, assistant, or employee of the licensee, registrant, endorsement, or permit holder whether the solicitation occurs after death or while

death is impending. This chapter does not prohibit general advertising or the sale of prearrangement funeral service contracts;

(2) Solicitation may include employment of solicitors, payment of commission, bonus, rebate, or any form of gratuity or payment of a finders fee, referral fee, or other consideration given for the purpose of obtaining or providing the services for a dead human body or where death is impending;

(3) Acceptance by a licensee, registrant, endorsement, or permit holder or other employee of a funeral establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, crematory, mausoleum, columbarium, florist, or other person providing goods and services to the disposition of dead human bodies;

(4) Using a casket or part of a casket that has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body without the written consent of the person lawfully entitled to control the disposition of remains of the deceased person in accordance with RCW 68.50.160. This subsection does not prohibit the use of rental caskets, such as caskets of which the outer shell portion is rented and the inner insert that contains the dead human body is purchased and used for the disposition, that are disclosed as such in the statement of funeral goods and services;

(5) Violation of a state law, municipal law, or county ordinance or regulation affecting the handling, custody, care, transportation, or disposition of dead human bodies;

(6) Refusing to promptly surrender the custody of a dead human body upon the expressed order of the person lawfully entitled to its custody under RCW 68.50.160;

(7) Selling, or offering for sale, a share, certificate, or an interest in the business of a funeral establishment, or in a corporation, firm, or association owning or operating a funeral establishment that promises or purports to give to purchasers a right to the services of a licensee, registrant, endorsement, or permit holder at a charge or cost less than offered or given to the public;

(8) The commission of an act involving moral turpitude, dishonesty, or corruption relating to the practice of the funeral profession whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license, registration, endorsement, or permit 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 purpose of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction in all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96A RCW;

(9) Misrepresentation or concealment of a material fact in obtaining a license, registration, endorsement, or permit or in reinstatement thereof;

(10) All advertising that is false, fraudulent, or misleading;

(11) Suspension or revocation or restriction of the individual's license, registration, endorsement, or permit 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;

(12) Violation of any state or federal statute or administrative ruling relating to funeral practice;

(13) Failure to cooperate with the board by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matters contained in a complaint filed with the board; or

(c) Not responding to subpoenas issued by the board whether or not the recipient of the subpoena is the accused in the proceeding;

(14) Failure to comply with an order issued by the board or an assurance of discontinuance entered into with the board;

(15) Aiding or abetting an unlicensed or unregistered person to practice where a license, registration, endorsement, or permit is required;

(16) Misrepresentation or fraud in any aspect of the conduct of funeral practice;

(17) Conviction of a gross misdemeanor or felony relating to this title. For the purpose 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. This section does not abrogate rights guaranteed under chapter 9.96A RCW;

(18) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the board or its authorized representative or the inspector, or by the use of threats or harassment against a witness to prevent that witness from providing evidence in a disciplinary hearing or other legal action;

(19) Diminished capacity or habitual intemperance in the use of alcohol, controlled substances, or prescribed drugs that impairs, interferes, or otherwise prevents the proper performance of licensed, registered, endorsed, or permitted duties or functions;

(20) Knowingly concealing information concerning a violation of this title;

(21) Incompetence or negligence as a licensee, registrant, endorsement, or permit holder in carrying out the duties of the profession.

NEW SECTION. Sec. 4. A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the board charging a license, registration, endorsement, or permit holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the board determines that the complaint merits investigation, or if the board has reason to believe, without a formal complaint, that a license holder or applicant might have engaged in unprofessional conduct, the board shall investigate to determine

whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

NEW SECTION. Sec. 5. (1) If the board determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charge or charges should be prepared and served upon the license, registration, endorsement, or permit holder or applicant at the earliest practical time. The statement of charge or charges must be accompanied by a notice that the license, registration, endorsement, or permit holder or applicant may request a hearing to contest the charge or charges. The license, registration, endorsement, or permit holder or applicant must file a request for hearing with the board within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, upon which the board may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the board shall fix the time of the hearing as soon as convenient, but the hearing must not be held earlier than thirty days after service of the charges upon the license, registration, endorsement, or permit holder or applicant. A notice of hearing must be issued at least twenty days before the hearing, specifying the time, date, and place of the hearing. The notice must also notify the license, registration, endorsement, or permit holder or applicant that a record of the proceeding will be kept, that the holder or applicant will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses who will be subject to cross-examination, and evidence in the holder's or applicant's own behalf, to cross-examine witnesses testifying against the holder or applicant, to examine such documentary evidence as may be produced against the holder or applicant, to conduct depositions, and to have subpoenas issued by the board.

NEW SECTION. Sec. 6. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the board. The board has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, that 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.

NEW SECTION. Sec. 7. (1) In the event of a finding of unprofessional conduct, the board shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW and the board shall notify the public, which notice must include press releases to appropriate local news media and the major news wire services. If the license, registration, endorsement, or permit holder or applicant is found to have not committed unprofessional conduct, the board shall immediately prepare and serve findings of fact and an order of dismissal of the charges. The board shall retain the findings of fact and order as a permanent record.

(2) The board shall report the issuance of statements of charges and final orders in cases processed by the board to:

(a) The person or agency who brought to the board's attention information that resulted in the initiation of the case;

(b) Appropriate organizations, public or private, that serve the professions; and

(c) Counterpart licensing boards in other states or associations of state licensing boards.

(3) This section does not require the reporting of information that is exempt from public disclosure under chapter 42.17 RCW.

NEW SECTION. Sec. 8. The department shall not issue a license, registration, endorsement, or permit to a person whose license, registration, endorsement, or permit has been denied, revoked, or suspended by the board except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension; or in conformity with an order of reinstatement issued by the board; or in accordance with the final judgment in a proceeding for review instituted under this chapter.

NEW SECTION. Sec. 9. An order under proceedings authorized under this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, takes effect immediately upon its being served. The order, if appealed to the court, may not be stayed pending the appeal unless the board or court to which the appeal is taken enters an order staying the order of the board, which stay must provide for terms necessary to protect the public.

NEW SECTION. Sec. 10. An individual who has been disciplined or whose license, registration, endorsement, or permit has been denied by the board may appeal the decision as provided in chapter 34.05 RCW.

NEW SECTION. Sec. 11. A person whose license, registration, endorsement, or permit has been suspended or revoked under this chapter may petition the board for reinstatement after an interval as determined by the board in the order. The board shall hold hearings on the petition and may deny the petition or may order reinstatement, impose terms and conditions as provided in section 12 of this act, and issue an order of reinstatement. The board may require successful completion of an examination as a condition of reinstatement.

NEW SECTION. Sec. 12. Upon a finding that a license holder or applicant has committed unprofessional conduct, the board may issue an order providing for one or any combination of the following:

(1) Revocation of the license, registration, endorsement, or permit;

(2) Suspension of the license, registration, endorsement, or permit for a fixed or indefinite term;

(3) Restriction or limitation of the practice;

- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a superior approved by the board;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed one thousand dollars per violation, that is to be paid to the board's fund;
- (9) Denial of the license, registration, endorsement, or permit request; and
- (10) Corrective action.

An action under this section may be totally or partly stayed by the board. In determining what action is appropriate, the board must first consider what sanctions are necessary to protect or compensate the public. Only after the provisions have been made may the board consider and include in the order requirements designed to rehabilitate the license, registration, endorsement, or permit holder or applicant. Costs associated with compliance with orders issued under this section are the obligation of the license, registration, endorsement, or permit holder or applicant.

The licensee, registrant, endorsement or permit holder, or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee, registrant, endorsement or permit holder, or applicant has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee, registrant, endorsement or permit holder, or applicant acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

NEW SECTION. **Sec. 13.** (1) Prior to serving a statement of charges, the board may furnish a statement of allegations to the licensee, registrant, endorsement or permit holder, or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The board and the licensee, registrant, endorsement or permit holder, or applicant may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the licensee, registrant, endorsement or permit holder, or applicant is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or

inability to practice, if proven, constitutes grounds for discipline under this chapter; an agreement on the part of the licensee, registrant, endorsement or permit holder, or applicant that the sanctions set forth in this chapter, except for revocation, suspension, censure, or reprimand of a licensee, registrant, endorsement of permit holder, or applicant may be imposed as part of the stipulation, except that no fine may be imposed but the licensee, registrant, endorsement or permit holder, or applicant may agree to reimburse the board the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the board to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee, registrant, endorsement or permit holder, or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the board may proceed to formal disciplinary action pursuant to this chapter.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee, registrant, endorsement or permit holder, or applicant and the board, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the board. Should the licensee, registrant, endorsement or permit holder, or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the board may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under this chapter.

NEW SECTION. Sec. 14. If an order for payment of a fine is made as a result of an order entered under this chapter and timely payment is not made as directed in the final order, the board may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement is in addition to other rights the board may have as to a licensee, registrant, endorsement, or permit holder ordered to pay a fine but does not limit a licensee's, registrant's, or endorsement or permit holder's ability to seek judicial review under this chapter. In an action for enforcement of an order of payment of a fine, the board's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment.

NEW SECTION. Sec. 15. (1) The director shall investigate a complaint concerning practice by an unlicensed person for which a license, registration, endorsement, or permit is required under this chapter. 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 does not relieve the person practicing or operating a business without a license, registration, permit, or registration from

criminal prosecution for the unauthorized practice or operation, but the remedy of a cease and desist order is in addition to 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, provisions for enforcement or agency orders under chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, the board, or a person may, in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin a person practicing a profession or business for which a license, registration, endorsement, or permit is required under this chapter without a license, registration, endorsement, or permit from engaging in the practice or operation of the business until the required license, registration, endorsement, or permit is secured. However, the injunction does not relieve the person so practicing or operating a business without a license, registration, endorsement, or permit from criminal prosecution for the unauthorized practice or operation, but the remedy by injunction is in addition to criminal liability.

(3) Unlicensed practice of a profession or operation of a business for which a license, registration, endorsement, or permit is required under this chapter, unless otherwise exempted by law, is a gross misdemeanor. Fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section must be remitted to the board.

NEW SECTION. Sec. 16. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars that must be placed in the board account. For the purpose of this section, the superior court issuing an injunction shall retain jurisdiction and the cause must be continued, and the attorney general acting in the name of the state may petition for the recovery of civil penalties.

NEW SECTION. Sec. 17. If the board determines or has cause to believe that a license, registration, endorsement, or permit holder has committed a crime, the board, immediately subsequent to issuing findings of fact and a final order, shall notify the attorney general or the county prosecuting attorney in the county in which the act took place of the facts known to the board.

NEW SECTION. Sec. 18. Sections 2 through 17 of this act are each added to chapter 18.39 RCW.

Sec. 19. RCW 18.130.040 and 1993 c 367 s 4 are each amended to read as follows:

(1) This chapter applies only to the secretary and the boards having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
 - (ii) Naturopaths licensed under chapter 18.36A RCW;
 - (iii) Midwives licensed under chapter 18.50 RCW;
 - (iv) Ocularists licensed under chapter 18.55 RCW;
 - (v) Massage operators and businesses licensed under chapter 18.108 RCW;
 - (vi) Dental hygienists licensed under chapter 18.29 RCW;
 - (vii) Acupuncturists certified under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners certified under chapter 18.89 RCW;
 - (x) Persons registered or certified under chapter 18.19 RCW;
 - (xi) Persons registered as nursing pool operators;
 - (xii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiii) Health care assistants certified under chapter 18.135 RCW;
 - (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xv) Sex offender treatment providers certified under chapter 18.155 RCW;
- and
- (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205.
- (b) The boards having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic disciplinary board as established in chapter 18.26 RCW governing licenses issued under chapter 18.25 RCW;
 - (iii) The dental disciplinary board as established in chapter 18.32 RCW;
 - (iv) The council on hearing aids as established in chapter 18.35 RCW;
 - (v) ~~((The board of funeral directors and embalmers as established in chapter 18.39 RCW;~~
 - ~~((vi)))~~ (vi) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - ~~((vii)))~~ (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - ~~((viii)))~~ (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - ~~((ix)))~~ (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
 - ~~((x)))~~ (ix) The medical disciplinary board as established in chapter 18.72 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
 - ~~((xi)))~~ (x) The board of physical therapy as established in chapter 18.74 RCW;
 - ~~((xii)))~~ (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
 - ~~((xiii)))~~ (xii) The board of practical nursing as established in chapter 18.78 RCW;

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

~~((xv))~~ (xiv) The board of nursing as established in chapter 18.88 RCW; and

~~((xvi))~~ (xv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. However, the board of chiropractic examiners has authority over issuance and denial of licenses provided for in chapter 18.25 RCW, the board of dental examiners has authority over issuance and denial of licenses provided for in RCW 18.32.040, and the board of medical examiners has authority over issuance and denial of licenses and registrations provided for in chapters 18.71 and 18.71A RCW. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

NEW SECTION. Sec. 20. RCW 18.39.178 and 1987 c 150 s 29 & 1986 c 259 s 59 are each repealed.

Passed the House February 8, 1994.
Passed the Senate March 2, 1994.
Approved by the Governor March 21, 1994.
Filed in Office of Secretary of State March 21, 1994.

CHAPTER 18

[House Bill 2282]

**DISTRICT JUDGES' SALARIES—NOT REDUCED WHEN PRO TEMPORE
JUDGE SERVES DUE TO AFFIDAVIT OF PREJUDICE**

AN ACT Relating to district court judges pro tempore; and amending RCW 3.34.130.

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

Sec. 1. RCW 3.34.130 and 1993 c 330 s 1 are each amended to read as follows:

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

pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority. For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the judge in whose place he or she serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves while a district judge is using sick leave granted in accordance with RCW 3.34.100 or while a district court judge is disqualified from serving following the filing of an affidavit of prejudice.

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

Passed the House February 8, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 19

[House Bill 2377]

BUSINESS RECORDS—OPTICAL IMAGING REPRODUCTIONS ADMISSIBLE AS EVIDENCE

AN ACT Relating to optical imaging; and amending RCW 5.46.010.

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

Sec. 1. RCW 5.46.010 and 1959 c 125 s 1 are each amended to read as follows:

If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical imaging, or other process which accurately

reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless the same is an asset or is representative of title to an asset held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

Passed the House February 4, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 20

[Substitute House Bill 2428]

SCHOOL DISTRICT OFFICERS—EMPLOYMENT OF SPOUSE BY DISTRICT

AN ACT Relating to school district employees; and amending RCW 42.23.030.

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

Sec. 1. RCW 42.23.030 and 1993 c 308 s 1 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

- (1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;
- (2) The designation of public 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 with a population of one hundred twenty-five thousand or more, 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 with a population of one hundred twenty-five thousand or more, 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 third class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total 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 employment 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 employment 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.150.040, 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 school district, 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 RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes

office: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement operating in the district.

Passed the House February 9, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 21

[House Bill 2492]

MEDICAL ASSISTANCE—PLANS OF CARE AND RECOVERY OF PAYMENTS

AN ACT Relating to medical assistance federal requirements; amending RCW 11.62.005; reenacting and amending RCW 74.09.520; adding a new section to chapter 43.20B RCW; creating a new section; repealing RCW 43.20B.140; and providing an effective date.

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

Sec. 1. RCW 11.62.005 and 1988 c 64 s 24 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent; and/or

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under section 3 of this act; and/or

(iv) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a) (iii) and (iv) of this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization.

(4) "Organization" shall include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

NEW SECTION. **Sec. 2.** RCW 43.20B.140 and 1993 c 272 s 2 & 1987 c 283 s 13 are each repealed.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.20B RCW to read as follows:

(1) The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual as required by this chapter and 42 U.S.C. Sec. 1396p.

(2) In the case of an individual who was fifty-five years of age or older when the individual received medical assistance, the department shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services.

(3) The department shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship.

(4) The department is authorized to adopt rules to effect recovery under this section. The department may adopt by rule later enactments of the federal laws referenced in this section.

Sec. 4. RCW 74.09.520 and 1993 c 149 s 10 and 1993 c 57 s 1 are each reenacted and amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved (~~by a physician~~) and reviewed by a nurse (~~every ninety days~~).

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

NEW SECTION. Sec. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 6. This act shall take effect July 1, 1994.

Passed the House February 9, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 22

[Substitute House Bill 2541]

NEWSPAPER DEFINED FOR BUSINESS AND OCCUPATION TAX PURPOSES

AN ACT Relating to defining newspapers for tax purposes; amending RCW 82.04.214; and creating a new section.

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

Sec. 1. RCW 82.04.214 and 1993 sp.s. c 25 s 304 are each amended to read as follows:

"Newspaper" means a publication issued regularly at stated intervals at least ~~((once a week))~~ twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.

NEW SECTION. **Sec. 2.** This act shall apply retroactively to July 1, 1993.

Passed the House February 9, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 23

[Engrossed House Bill 2561]

CONTROLLED ATMOSPHERE STORAGE OF APPLES

AN ACT Relating to controlled atmosphere storage; and amending RCW 15.30.060.

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

Sec. 1. RCW 15.30.060 and 1967 c 215 s 1 are each amended to read as follows:

The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: **PROVIDED**, That such maximum amount of oxygen retained shall not exceed five percent when apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: **PROVIDED**, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: **PROVIDED**, That such period shall not be less than forty-five days for Gala and Jonagold varieties and not less than ninety days for other apples.

Passed the House February 4, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 24

[House Bill 2562]

**IRRIGATION DISTRICT FORECLOSURE SALES—MOSQUITO
DISTRICT ASSESSMENTS REMAIN ENCUMBRANCE ON TITLE**

AN ACT Relating to encumbrances on treasurer's deeds executed to purchasers of property at proceedings to foreclose liens on delinquent assessments; and amending RCW 87.06.090.

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

Sec. 1. RCW 87.06.090 and 1988 c 134 s 9 are each amended to read as follows:

(1) The treasurer shall execute a treasurer's deed to any person who purchases property at the foreclosure sale. The deed shall vest title to the property therein described, without further acknowledgment or evidence of such conveyance, in the grantee or his or her heirs and assigns. The treasurer's deed shall be substantially in the following form:

TREASURER'S DEED

State of Washington

County of

This indenture, made this day of,, between, as treasurer of irrigation district, state of Washington, party of the first part, and, party of the second part:

Witnesseth, that whereas, at the public sale of real property held on the day of,, pursuant to an irrigation assessment judgment entered in the superior court in the county of on the day of,, in proceedings to foreclose assessment liens upon real property and an order of sale duly issued by the court, duly purchased in compliance with the laws of the state of Washington, for and in consideration of the sum of dollars the following described real property, to wit: (Here place description of real property conveyed) and that has complied with the laws of the state of Washington necessary to entitle (him, her, or them) to a deed for the real property.

Now, therefore know ye, that, I, treasurer of said irrigation district of, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real property hereinbefore described, as fully and completely as said party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this day of, A.D.

.....
Treasurer for
Irrigation District

(2) The title shall be free from all encumbrances except for the following taxes and assessments if they are not due at the time of the foreclosure sale: Property taxes, drainage or diking district assessments, drainage or diking improvement district assessments, mosquito district assessments, and irrigation district assessments.

Passed the House February 11, 1994.
Passed the Senate March 1, 1994.
Approved by the Governor March 21, 1994.
Filed in Office of Secretary of State March 21, 1994.

CHAPTER 25

[Substitute House Bill 2566]

**DONORS AND DISTRIBUTORS OF ITEMS TO CHILDREN—CIVIL AND
CRIMINAL IMMUNITY**

AN ACT Relating to children's charitable needs; and adding a new chapter to Title 70 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) "Distributing organization" means a charitable nonprofit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books.

NEW SECTION. **Sec. 2.** Donors and distributing organizations are not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated children's items unless a donor or distributing organization acts with gross negligence or intentional misconduct.

NEW SECTION. **Sec. 3.** Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in section 2 of this act.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall constitute a new chapter in Title 70 RCW.

Passed the House February 9, 1994.
Passed the Senate February 26, 1994.
Approved by the Governor March 21, 1994.
Filed in Office of Secretary of State March 21, 1994.

CHAPTER 26

[Substitute House Bill 2608]

PORT DISTRICTS—SALE OF DISTRICT PROPERTY

AN ACT Relating to the sale of port property; and amending RCW 53.08.090.

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

Sec. 1. RCW 53.08.090 and 1981 c 262 s 1 are each amended to read as follows:

(1) A port commission may, by resolution, authorize the managing official of a port district to sell and convey port district property of ~~((less than twenty-five hundred))~~ ten thousand dollars or less in value. ~~((Such))~~ The authority shall be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of ~~((such))~~ the property having a value in excess of ~~((twenty-five hundred))~~ ten thousand dollars shall not be broken down into components of ~~((less than twenty-five hundred))~~ ten thousand dollars or less value and sold in ~~((such))~~ the smaller components unless ~~((such))~~ the smaller components be sold by public competitive bid. A port district may sell and convey any of its real or personal property valued at more than ~~((twenty-five hundred))~~ ten thousand dollars when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified to find ~~((such))~~ the property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section shall be deemed to repeal or modify procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW.

(2) The ten thousand dollar figures in subsection (1) of this section shall be adjusted annually based upon the governmental price index established by the department of revenue under RCW 82.14.200.

Passed the House February 11, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 27

[House Bill 2750]

JOINT OPERATING AGENCY CONTRACTS

AN ACT Relating to joint operating agencies; and amending RCW 43.52.565.

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

Sec. 1. RCW 43.52.565 and 1987 c 376 s 2 are each amended to read as follows:

(1) An operating agency may enter into contracts through competitive negotiation under subsection (2) of this section for materials, equipment, supplies, or work to be performed during commercial operation of a nuclear generating project and associated facilities (a) to replace a defaulted contract or a contract terminated in whole or in part, or (b) where consideration of factors in addition to price, such as technical knowledge, experience, management, staff, or schedule, is necessary to achieve economical operation of the project, provided that the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The selection of a contractor shall be made in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the operating agency shall specify at a preproposal conference the contract requirements in the request for proposal, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the operating agency and the state taking into consideration the requirements set forth in the request for proposals(~~(:—PROVIDED, That for any)~~). If a proposed contract ((which)) exceeds ten million dollars, the operating agency shall notify the committees on energy and utilities of the senate and house of representatives at least thirty days prior to the date of contract execution and shall provide a copy of the contract with the notification. The contract file shall contain the basis on which the successful offeror is selected. The operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.

Passed the House February 10, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 28

[Substitute House Bill 2771]

SETTING FIRES FOR FIRE FIGHTER TRAINING—CONDITIONS

AN ACT Relating to fire protection district authorities; amending RCW 70.94.650; and adding a new section to chapter 52.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.12 RCW to read as follows:

Without obtaining a permit issued under RCW 70.94.650, fire protection district fire fighters may set fire to structures located outside of urban growth areas in counties that plan under the requirements of RCW 36.70A.040, and outside of any city with a population of ten thousand or more in all other

counties, for instruction in methods of fire fighting, if all of the following conditions are met:

(1) The fire conforms with any other permits, licenses, or approvals that are required;

(2) The fire is not located in an area that is declared to be in an air pollution episode or any stage of an impaired air quality as defined in RCW 70.94.715 and 70.94.473;

(3) Nuisance laws are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property;

(4) Notice of the fire is provided to the owners of property adjoining the property on which the fire will occur, to other persons who potentially will be impacted by the fire, and to additional persons in a broader manner as specifically requested by the local air pollution control agency or the department of ecology;

(5) Each structure that is proposed to be set on fire must be identified specifically as a structure to be set on fire. Each other structure on the same parcel of property that is not proposed to be set on fire must be identified specifically as a structure not to be set on fire; and

(6) Before setting a structure on fire, a good-faith inspection is conducted to determine if materials containing asbestos are present, the inspection is documented in writing and forwarded to the appropriate local air authority or the department of ecology if there is no local air authority, and asbestos that is found is removed as required by state and federal laws.

Sec. 2. RCW 70.94.650 and 1993 c 353 s 1 are each amended to read as follows:

(1) Any person who proposes to set fires in the course of

(a) weed abatement,

(b) instruction in methods of fire fighting, except training to fight structural fires as provided in section 1 of this act and except forest fire training, or

(c) agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of state-wide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as

practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall provide convenient methods for issuance and oversight of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in

neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

Passed the House February 11, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 29

[House Bill 2843]

WORKERS' COMPENSATION—PILOT PROJECTS TO REDUCE LONG-TERM DISABILITY RATE

AN ACT Relating to conducting systematic pilot projects by the department of labor and industries to reduce the rate of long-term disability within the workers' compensation system; adding a new chapter to Title 51 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. FINDINGS. The legislature finds that the financial costs of long-term disability represent a significant amount of lost productivity for the state's economy and tax base, and result in a lower standard of living for many citizens. Further, the uncompensated human costs of long-term disability affect tens of thousands of injured workers and their families and include loss of self-esteem, lower standards of living, dreams denied, divorce, and, in some severe cases, death.

The legislature also finds that long-term disability is a rapidly growing problem and that the most successful strategies for preventing long-term disability and returning injured workers to work emphasize active employer and employee organization involvement, improved medical treatment and decision making, and better coordination and management of cases that are at high risk of long-term disability.

Therefore, it is the intent of the legislature that the department conduct two pilot projects to reduce the rate of long-term disability and initiate a cultural shift from disability management to disability prevention. These pilot projects are intended to test the viability of new ideas and approaches for system-wide implementation and are also intended to be developed in consultation with the workers' compensation advisory committee to allow for some flexibility in design and intent. Both pilot projects are intended to shift resources to the early portions of the most difficult claims in an attempt to prevent the system failures that contribute to long-term disability.

NEW SECTION. Sec. 2. FIRST PILOT PROJECT. The first pilot project must include the following elements:

(1) Preinjury outreach and planning must be used to prevent disabling injuries, to provide appropriate transitional work and reemployment opportunities for those workers who are injured, and to enhance the abilities of employers and providers to prevent long-term disability. Provider education and outreach must encourage and enable attending providers to more adequately and completely fulfill their responsibilities as currently defined.

(2) Lower claims loads must be combined with return-to-work and on-the-job training projects for more intensive claims management, as provided in this subsection:

(a) A team approach must be used to begin working with claimants at risk of long-term disability as soon as possible after the injury occurs. This project must include the following elements: Lower claims loads for claims managers; intensive screening of claims; and intensive claims management for injured workers at high risk of long-term disability.

(b) In cases in which injured workers would otherwise qualify for vocational rehabilitation services, assistance in on-the-job training for alternative work may be provided earlier in the life of the claim. To subsidize the cost of on-the-job training with the employer, the department may use for a specified contract funds that would otherwise have been used to develop and implement a traditional vocational rehabilitation plan. These on-the-job training contracts must be evaluated for possible expanded eligibility at the earliest time feasible. An injured worker who participates in an on-the-job training program under this subsection and utilizes funds that would otherwise be used to develop and implement a traditional vocational rehabilitation plan is not eligible at a later time in the life of the claim for traditional vocational rehabilitation services.

(c) Every effort must be made to move beyond the finding of medically fixed and stable and employable as the basis for closing claims, and instead work to achieve a circumstance of employment that is mutually beneficial to all parties. If this is not possible, and:

(i) If the worker is found to be medically fixed and stable with no work restrictions, then the claim must be closed with either return to work or a seamless transition, coordinated by the claims manager, to other forms of assistance that might be available, including the basic health plan, unemployment insurance benefits, and job services; or

(ii) If the worker is found to be medically fixed and stable with restrictions, then the claims manager shall work with the employer to use job modification and on-the-job training to enable the worker to be reemployed, either with the original employer or a new employer.

NEW SECTION. Sec. 3. SECOND PILOT PROJECT. The second pilot project must incorporate all of the elements of the first pilot under section 2 of this act and also must provide case managers for injured workers at high risk of long-term disability and reconfigure portions of the current independent medical

examination system. In addition to the elements of the first pilot, the second pilot must include the following elements:

(1) Case managers must be used to coordinate a team approach in working with claimants at risk of long-term disability as soon as possible after the injury occurs. It is preferred that case managers be employees of the department.

(2) An intermediate screening of all compensable claims must be used to evaluate their need for intensive services, including the provision of case management.

(3)(a) A medical progress examination, separate from an impairment rating examination, must be used to determine whether a change in diagnosis or treatment is in order. For a claim at six months of time-loss payments or earlier, if there is no clear progress toward return to work or medical progress the claims manager shall request that a medical progress examination be conducted by a physician other than the attending physician. The purpose of the medical progress examination is to determine whether the injured worker's medical condition is making appropriate progress, is fixed and stable, or, if neither, to recommend appropriate changes in either diagnosis or treatment, or both.

(b)(i) The claims manager shall request the medical progress exam, in consultation with the employer, by selecting an examiner from a pool of qualified examiners, with concurrence by both the injured worker and the employer, or the worker or employer's representative. If agreement among the parties cannot be reached after consideration of three proposed examiners, the claims manager shall select the examiner.

(ii) The pool of qualified examiners must be established using new criteria and standards to be developed by the department and endorsed by the workers' compensation advisory committee, with input from other interested parties, before taking effect.

(c) If the examination finds the claimant's medical condition to be fixed and stable, including if appropriate an evaluation of the claimant's physical conditioning and rehabilitation needs, the case must be referred back to the attending provider for review and comment, and an impairment rating if the attending physician concurs with the findings of the medical progress examination.

(d) The attending provider is encouraged to take a more active role in dispute prevention, so consequently all medical progress reports must be reviewed by the attending provider in consultation with the injured worker. As part of this review, the attending provider shall state in writing why the attending provider agrees or disagrees with the examiner's findings and recommendations. The attending provider must receive reasonable reimbursement for this review.

(4)(a) The attending physician must be encouraged to either conduct or participate, or both, in the permanent impairment rating exam to prevent disputes and achieve more timely and impartial decisions.

(b) If the attending physician performs the examination, special resources must be available to assist the attending physician if necessary.

(c) If the attending physician chooses not to be involved in performing the rating examination, the injured worker must be informed of this choice and may choose one of the following options:

(i) The examination will be performed by a physician agreed to under the current procedures for agreed exams; or

(ii) The injured worker and the employer agree upon an examiner from a pool of qualified rating examiners to recommend a rating to the claims manager. The pool of qualified rating examiners must be established on new criteria and standards to be developed by the department and endorsed by the workers' compensation advisory committee, with input from other interested parties, before taking effect.

(d) If the exam is conducted by a qualified rating examiner, the rating physician shall recommend a rating, sending it to the claim manager and the attending provider, with whom the injured worker is urged to meet to discuss the recommended rating. At this point, the attending provider may either agree to the rating of the qualified rating examiner in writing or disagree with the rating in writing, including any suggestions for changes in the rating. The attending provider must receive a reasonable reimbursement for this review.

(e) If the injured worker disagrees with the attending physician's rating, the injured worker may arrange for an agreed examination under the procedures under this subsection.

(f) If the employer disagrees with the attending physician's rating, the employer may choose either:

(i) An agreed-upon examination under the procedures under this subsection; or

(ii) The employer may select a rating examiner from the pool of qualified rating examiners. If the rating recommendation from this examination conflicts with that from the attending physician rating examination, the claims manager shall select one or the other of the ratings but may not split the difference between the ratings.

(5) The closure of claims must be handled with greater sensitivity to the anxiety this action might present for the injured worker, including improved closure notification and medical transition procedures.

NEW SECTION. Sec. 4. EVALUATION. The department shall evaluate both pilot projects established under sections 2 and 3 of this act on the objective, observable results of the services provided. Outcome measures must include:

(1) A principle measure for the pilots must be the amount of reduction, if any, in the rate of long-term disability among state fund claimants;

(2) The measure of increases, if any, in the rate of appropriate return to work before full medical stability, and any increase in the rate of return to work following claim closure;

(3) The measure of the economic advantages to the employer, if any, of taking a more active role in work safety, return-to-work planning, and disability

prevention. The cost of claims and the effects of the pilots on employer premium rates must be measured;

(4) The measure of improvements, if any, in the level of customer satisfaction and any reduction in the rate of disputes and appeals;

(5) The measure of improvements, if any, in the efficient functioning and outcomes of the redesigned claims units;

(6) The duration of follow-up data must be sufficient to provide the desired measurements. Measures of services, characteristics, and outcomes must be gathered for individual injured workers and employers in these pilots and a comparative sample of injured workers and employers not included in the pilots, and collected for comparison and evaluation in a common format; and

(7) Further research must be conducted by the department into the identification of persons who are at high risk of long-term disability in the workers' compensation system.

NEW SECTION. Sec. 5. REPORTS. The department shall make annual reports to the legislature on the progress and outcomes of the pilot projects specified in sections 2 and 3 of this act beginning on December 1, 1994, and semiannual reports to the workers' compensation advisory committee, beginning with the committee's meeting in the second quarter of 1994.

NEW SECTION. Sec. 6. CAPTIONS. Captions as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 7. CODIFICATION. Sections 1 through 5 of this act shall constitute a new chapter in Title 51 RCW.

NEW SECTION. Sec. 8. EXPIRATION. This act shall expire June 30, 1999.

Passed the House February 10, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 30

[Engrossed Senate Bill 5154]

MOBILE HOME PARK OWNER RESPONSIBLE FOR MAINTENANCE OF PERMANENT STRUCTURES

AN ACT Relating to mobile home rental parks; adding a new section to chapter 59.20 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 59.20 RCW to read as follows:

(1) The legislature finds that some mobile home park owners transfer the responsibility for the upkeep of permanent structures within the mobile home park to the park tenants. This transfer sometimes occurs after the permanent

structures have been allowed to deteriorate. Many mobile home parks consist entirely of senior citizens who do not have the financial resources or physical capability to make the necessary repairs to these structures once they have fallen into disrepair. The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

(2) A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park. A provision within a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the park tenants is void.

(3) A "permanent structure" for purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants.

(4) Nothing in this section shall be construed to prohibit a park owner from requiring a tenant to maintain his or her mobile home or yard. Nothing in this section shall be construed to prohibit a park owner from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to an organization of park tenants or to an individual park tenant when requested by the tenant organization or individual tenant.

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 February 14, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 31

[Senate Bill 6030]

SEWER AND WATER DISTRICTS—PUBLIC WORKS PROVISIONS REVISED

AN ACT Relating to water and sewer districts; and reenacting RCW 56.08.070 and 57.08.050.

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

Sec. 1. RCW 56.08.070 and 1993 c 198 s 16 and 1993 c 45 s 4 are each reenacted to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract

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

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

(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. RCW 57.08.050 and 1993 c 198 s 21 and 1993 c 45 s 8 are each reenacted to read as follows:

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

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

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

fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the check, cash or bid bonds and the amount thereof shall be forfeited to the water district: PROVIDED, That if the bidder fails to enter into a contract in accordance with his or her bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then the water district shall be entitled to collect from the 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 Senate February 1, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 32

[Senate Bill 6067]

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

AN ACT Relating to courts of limited jurisdiction; and amending RCW 2.52.010, 3.38.010, 3.70.010, 3.70.020, 3.70.040, 10.04.800, and 12.40.800.

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

Sec. 1. RCW 2.52.010 and 1987 c 322 s 1 are each amended to read as follows:

There is hereby established a judicial council which shall consist of the following:

- (1) The chief justice of the supreme court;
- (2) One judge of the court of appeals, to be selected and appointed by the three chief judges of the three divisions thereof;
- (3) One judge of the superior court, to be selected and appointed by the superior court judges' association;
- (4) Two members of the state senate who shall not be members of the same political party; two members of the state house of representatives who shall not be members of the same political party;

(5) Four members of the bar who are practicing law, one of whom shall be either a public defender or a legal services attorney, and at least one of whom is a prosecuting attorney, with the public defender or legal services attorney, and two to be appointed by the board of governors of the Washington state bar association from a list of nominees submitted by the legislative committee of the Washington state bar association;

(7) The attorney general; and

(8) One judge from the courts of limited jurisdiction chosen by the Washington state ~~((magistrates'))~~ district and municipal court judges' association.

Sec. 2. RCW 3.38.010 and 1984 c 258 s 22 are each amended to read as follows:

There is established in each county a district court districting committee composed of the following:

(1) The judge of the superior court, or, if there be more than one such judge, then one of the judges selected by that court;

(2) The prosecuting attorney, or a deputy selected by the prosecuting attorney;

(3) A practicing lawyer of the county selected by the president of the largest local bar association, if there be one, and if not, then by the county legislative authority;

(4) A judge of a court of limited jurisdiction in the county selected by the president of the Washington state ~~((magistrates'))~~ district and municipal court judges' association; and

(5) The mayor, or representative appointed by the mayor, of each first, second, and third class city of the county;

(6) One person to represent the fourth class cities of the county, if any, to be designated by the president of the association of Washington cities: PROVIDED, That if there should be neither a first class nor a second class city within the county, the mayor, or the mayor's representative, of each fourth class city shall be a member;

(7) The chairman of the county legislative authority; and

(8) The county auditor.

Sec. 3. RCW 3.70.010 and 1987 c 3 s 2 are each amended to read as follows:

There is established in the state an association, to be known as the Washington state ~~((magistrates'))~~ district and municipal court judges' association, membership in which shall include all duly elected or appointed and qualified judges of courts of limited jurisdiction, including but not limited to district judges and municipal court judges.

Sec. 4. RCW 3.70.020 and 1984 c 258 s 51 are each amended to read as follows:

~~((The first meeting of the Washington state magistrates' association shall be held at the next regular meeting of the present organization after June 7, 1961~~

~~to be held during the month of August or September, 1961, at which meeting those judges of courts of limited jurisdiction, as provided in RCW 3.70.010, attending shall temporarily organize themselves for the purpose of adopting a Constitution and bylaws and~~) Members of the Washington state district and municipal court judges' association may either (~~adopt or~~) amend the present (~~Constitution and~~) bylaws of the (~~Washington state magistrates'~~) association, adopt a constitution, or provide for bylaws only, electing officers as provided therein and doing all things necessary and proper to formally establish a permanent Washington state (~~magistrates'~~) district and municipal court judges' association(~~(, after which meeting)~~). The association may meet each year (~~during the month of August or September, beginning in 1962~~) at a time established by the association's governing board. Meetings shall be held in the state of Washington.

Sec. 5. RCW 3.70.040 and 1984 c 258 s 53 are each amended to read as follows:

The Washington state (~~magistrates'~~) district and municipal court judges' association shall:

(1) Continuously survey and study the operation of the courts served by its membership, the volume and condition of business of such courts, the methods of procedure therein, the work accomplished, and the character of the results;

(2) Promulgate suggested rules for the administration of the courts of limited jurisdiction not inconsistent with the law or rules of the supreme court relating to such courts;

(3) Report annually to the supreme court as well as the governor and the legislature on the condition of business in the courts of limited jurisdiction, including the association's recommendations as to needed changes in the organization, operation, judicial procedure, and laws or statutes implemented or enforced in these courts.

Sec. 6. RCW 10.04.800 and 1987 c 202 s 155 are each amended to read as follows:

The (~~magistrates'~~) district and municipal court judges' association may propose to the supreme court suggested forms for criminal actions for inclusion in the justice court criminal rules.

Sec. 7. RCW 12.40.800 and 1988 c 85 s 3 are each amended to read as follows:

The administrator for the courts and the (~~magistrates~~) district and municipal court judges' association shall prepare a model small claims informational brochure and distribute the model brochure to all small claims departments in the state. This brochure may be modified as necessary by each small claims department and shall be made available to all parties in any small claims action.

Passed the Senate February 1, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.
 Filed in Office of Secretary of State March 21, 1994.

CHAPTER 33

[Substitute Senate Bill 6083]

MORTGAGE BROKERS LICENSING ACT—REVISIONS

AN ACT Relating to mortgage brokers and loan originators; amending RCW 19.146.005, 19.146.010, 19.146.020, 19.146.020, 19.146.0201, 19.146.200, 19.146.205, 19.146.210, 19.146.220, 19.146.225, 19.146.230, 19.146.235, 19.146.030, 19.146.040, 19.146.060, 19.146.240, 19.146.245, 19.146.260, 19.146.265, 19.146.100, and 19.146.280; adding new sections to chapter 19.146 RCW; repealing RCW 19.146.270; repealing 1993 c 468 s 27 (uncodified); prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 19.146.005 and 1993 c 468 s 1 are each amended to read as follows:

The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a ~~((temporary))~~ state system of licensure in addition to rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

NEW SECTION. Sec. 2. A new section is added to chapter 19.146 RCW to read as follows:

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

Sec. 3. RCW 19.146.010 and 1993 c 468 s 2 are each amended to read as follows:

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(3) "Computer loan origination systems" or "CLO system" means the real estate mortgage financing information system defined by rule of the director.

~~((3))~~ (4) "Department" means the department of ~~((licensing))~~ financial institutions.

~~((4))~~ (5) "Director" means the director of ~~((licensing))~~ financial institutions.

~~((5))~~ (6) "Employee" means an individual who has an employment relationship acknowledged by both the employee and the licensee, and the individual is treated as an employee by the licensee for purposes of compliance with federal income tax laws.

(7) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

(8) "Loan originator" means a ~~((natural))~~ person employed, either directly or indirectly, or retained as an independent contractor by a ~~((licensed))~~ person required to be licensed as a mortgage broker, or a natural person who represents a ~~((licensed))~~ person required to be licensed as a mortgage broker, in the performance of any act~~((s))~~ specified in subsection ~~((7))~~ (10) of this section.

~~((6))~~ (9) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

~~((7))~~ (10) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain~~((, directly or indirectly negotiates, places, assists in placement, finds, or offers to negotiate, place, assist in placement, or find residential mortgage loans for others))~~ (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

~~((8))~~ (11) "Person" means a natural person, corporation, company, partnership, or association.

~~((9))~~ (12) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

~~((10))~~ (13) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

Sec. 4. RCW 19.146.020 and 1993 c 468 s 3 are each amended to read as follows:

(1) Except as provided under subsections (2) and (3) of this section, the following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of this state or the United States relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(c) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(d) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) Any mortgage broker approved and subject to auditing by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation;

(g) Any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act, 12 U.S.C. Sec. 1701, as now or hereafter amended;

(h) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(h); and

(i) A real estate broker who provides only information ~~((only))~~ regarding rates, terms, and lenders in connection with a CLO system, who ~~((may))~~ receives a fee for providing such information ~~((in an amount approved by the director and))~~, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1).

(2) Those persons otherwise exempt under subsection (1) (d), (f), or (g)(~~and (h)~~) of this section must comply with RCW 19.146.0201 and shall be subject to the director's authority to issue a cease and desist order for any violation of RCW 19.146.0201 and shall be subject to the director's authority to obtain and review books and records that are relevant to any allegation of such a violation.

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, such an applicant is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by RCW 19.146.020 may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

Sec. 5. RCW 19.146.020 and 1994 c . . . s 4 (section 4 of this act) are each amended to read as follows:

(1) Except as provided under subsections (2) and (3) of this section, the following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of this state or the United States relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(c) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(d) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) Any mortgage broker approved and subject to auditing by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation;

~~(g) ((Any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act, 12 U.S.C. Sec. 1701, as now or hereafter amended;~~

~~(h))~~ The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)~~((h))~~ (g); and

~~((h))~~ (h) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLO system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;
 (ii) Accepts a loan application, or submits a loan application to a lender;
 (iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1).

(2) Those persons otherwise exempt under subsection (1) (d)~~(e))~~ or (f) ~~((e))~~ (g)) of this section must comply with RCW 19.146.0201 and shall be subject to the director's authority to issue a cease and desist order for any violation of RCW 19.146.0201 and shall be subject to the director's authority to obtain and review books and records that are relevant to any allegation of such a violation.

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, such an applicant is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by RCW 19.146.020 may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are

consistent with those rules and consistent with the other provisions of this chapter.

Sec. 6. RCW 19.146.0201 and 1993 c 468 s 4 are each amended to read as follows:

It is unlawful for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f)~~((g), or (i))~~ in connection with a residential mortgage loan to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any ~~((conduct that operates as a fraud upon or))~~ unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Make any false statement in connection with any reports filed by a licensee, or in connection with any examination of the licensee's business;

(9) Make any payment, directly or indirectly, to any ~~((fee))~~ appraiser ~~((third party))~~ of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Fail to include the words "licensed mortgage broker" in ~~((all))~~ any advertising for the broker's services that ~~((are))~~ is directed at the general public if the person is required to be licensed under this chapter;

(11) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with ~~((the))~~ any requirement~~((s))~~ of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 or the equal credit opportunity act, Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in ~~((all))~~ any advertising of residential mortgage loans or any other mortgage brokerage activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, to act as a mortgage broker in any transaction (i) in which the mortgage broker acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage broker services to the borrower, the mortgage broker, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LICENSED MORTGAGE BROKER, AND WOULD LIKE TO PROVIDE MORTGAGE BROKERAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A MORTGAGE BROKER IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage brokerage business activities and shall maintain such person's mortgage brokerage business records separate and apart from the real estate brokerage activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the brokerage business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage brokerage activities where the director determines that maintaining such physical separation would constitute an undue

financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.090 or any rule adopted under those sections.

Sec. 7. RCW 19.146.200 and 1993 c 468 s 5 are each amended to read as follows:

(1) A person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.

(2) A person may not bring a suit or action for the collection of compensation as a mortgage broker unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. This subsection does not apply to suits or actions for the collection or compensation for services performed prior to the effective date of ~~((this))~~ section 5, chapter 468, Laws of 1993.

Sec. 8. RCW 19.146.205 and 1993 c 468 s 6 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. Unless waived by the director, the application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) Submission of a complete set of fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate ~~((license))~~ application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 ~~((to be sufficient))~~ to cover, but not exceed, the ~~((department's costs in administering this chapter))~~ cost of processing and reviewing the application. The director shall deposit the moneys in the ~~((mortgage broker fund created under RCW 19.146.270))~~ banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(3)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of ~~((forty))~~ not greater than sixty thousand dollars ~~((or such lower amount))~~ nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may

obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

NEW SECTION. **Sec. 9.** A new section is added to chapter 19.146 RCW to read as follows:

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An examination fee to cover the costs of any examination of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

Sec. 10. RCW 19.146.210 and 1993 c 468 s 7 are each amended to read as follows:

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

(a) The applicant has paid the required license fees;

(b) The applicant has complied with RCW 19.146.205;

(c) ~~((The applicant))~~ Neither the applicant nor any of its principals has ~~((not))~~ had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) ~~((The applicant))~~ Neither the applicant nor any of its principals has ~~((not))~~ been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) ~~((The applicant has at least two years of experience in the residential mortgage loan industry))~~ Either the applicant or one of its principals, who may be designated by the applicant, (i) has at least two years of experience in the residential mortgage loan industry or has completed the educational requirements established by rule of the director and (ii) has passed a written examination whose content shall be established by rule of the director; and

(f) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the ~~((departments))~~ department's actual cost to investigate the license.

(3) ~~((The director may delay the effective date of section 5 of this act for an additional thirty days with respect to an applicant for a mortgage broker license for the purpose of processing the application when the applicant has filed a completed application by October 31, 1993.))~~ The director shall issue a license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.

(4) A license issued pursuant to this chapter is valid from the date of issuance with no fixed date of expiration.

(5) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability arising from acts or omissions occurring before such surrender.

NEW SECTION. Sec. 11. A new section is added to chapter 19.146 RCW to read as follows:

Either the applicant or one of its principals, who may be designated by the applicant, and every branch manager of every licensee shall complete an annual continuing education requirement, which the director shall define by rule.

Sec. 12. RCW 19.146.220 and 1993 c 468 s 8 are each amended to read as follows:

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings. The director may impose any one or more of the following sanctions:

(a) Suspend or revoke licenses, deny applications for licenses, or ~~((fine))~~ impose penalties upon violators of cease and desist orders issued under this chapter. The director may impose fines, as established by rule by the director, for violations of or failure to comply with any lawful directive, order, or requirement of the director. Each day's continuance of the violation or failure to comply is a separate and distinct violation or failure;

~~((In addition, the director may))~~ (b) Issue an order directing a licensee, its employee or loan originator, or other person subject to this chapter to cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter, or to pay restitution to an injured borrower; or

(c) Issue an order removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator, as the case may be, of any licensed mortgage broker.

(2) The director may take those actions specified in subsection (1) of this section if the director finds any of the following:

(a) The licensee has failed to pay a fee due the state of Washington under this chapter or, to maintain in effect the bond or approved alternative required under this chapter ~~((, or to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter))~~; or

(b) The licensee, employee or loan originator of the licensee, or person subject to the license requirements or prohibited practices of this chapter has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee, employee, or loan originator of the licensee in accordance with this chapter; or

(c) The licensee, its employee or loan originator, or other person subject to this chapter has violated any provision of this chapter or a rule adopted under this chapter; or

~~((e))~~ (d) The licensee made false statements on the application or omitted material information that, if known, would have allowed the director to deny the application for the original license.

(3) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding, against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall be effective if the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or

defendant on file with the director. In any judicial action, suit, or proceeding arising under this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of Thurston county.

NEW SECTION. Sec. 13. A new section is added to chapter 19.146 RCW to read as follows:

The director may, at his or her discretion and as provided for in RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 19.146 RCW to read as follows:

Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held, within fourteen days unless otherwise specified in chapter 34.05 RCW, upon request to determine whether the order will become permanent.

If it appears that a person has engaged in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The director shall not be required to post a bond in any court proceedings.

Sec. 15. RCW 19.146.225 and 1993 c 468 s 9 are each amended to read as follows:

In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage brokerage commission and to govern the activities of licensed mortgage brokers ((consistent with)) and other persons subject to this chapter.

Sec. 16. RCW 19.146.230 and 1993 c 468 s 10 are each amended to read as follows:

The proceedings for denying license applications, issuing cease and desist orders, ~~((and))~~ suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or

review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 17. RCW 19.146.235 and 1993 c 468 s 11 are each amended to read as follows:

For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have ~~((free))~~ access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director or designated person may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such investigation. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to the effective date of this section, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been taken or to investigate a complaint.

Sec. 18. RCW 19.146.030 and 1993 c 468 s 12 are each amended to read as follows:

(1) Upon receipt of a loan application and before the receipt of any moneys from a borrower, a mortgage broker shall provide to each borrower a full written ~~((notice indicating the number of the lenders with whom it maintains a written correspondent or loan brokerage agreement, unless exempt from licensing under this chapter, and make a full written))~~ disclosure ~~((to each borrower))~~ containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or

breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form approved by the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) The name of the lender and the nature of the business relationship between the lender providing the residential mortgage loan and the mortgage broker, if any: PROVIDED, That this disclosure may be made at any time up to the time the borrower accepts the lender's commitment; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation

of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A violation of the Truth-in-Lending Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation of this section for purposes of this chapter.

(5) A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required by this subsection.

Sec. 19. RCW 19.146.040 and 1987 c 391 s 6 are each amended to read as follows:

(1) Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

Sec. 20. RCW 19.146.060 and 1987 c 391 s 8 are each amended to read as follows:

(1) A mortgage broker shall use generally accepted accounting principles.

(2) A mortgage broker shall maintain accurate, current, and readily available books and records at the mortgage broker's usual business location until at least ~~((six*))~~ four years have elapsed following the effective period to which the books and records relate. "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential

mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

Sec. 21. RCW 19.146.240 and 1993 c 468 s 14 are each amended to read as follows:

(1) Any person injured by a violation of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator (~~(committing)~~) who committed the violation.

(2) A person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the alleged violation of this chapter or rules adopted under this chapter. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of filing of any claim or action. A judgment arising from a violation of this chapter or rule adopted under this chapter shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

Sec. 22. RCW 19.146.245 and 1993 c 468 s 15 are each amended to read as follows:

A licensed mortgage broker is liable for any conduct violating this chapter by a loan originator or other licensed mortgage broker while employed or engaged by the licensed mortgage broker. In addition, a branch office manager is liable for any conduct violating this chapter by a loan originator or other licensed mortgage broker employed or engaged at the branch office.

Sec. 23. RCW 19.146.260 and 1993 c 468 s 17 are each amended to read as follows:

Every licensed mortgage broker must have and maintain an office in this state, or within thirty miles of the border of this state, accessible to the public and which shall serve as his or her office for the transaction of business. (~~Any office so established must comply with the zoning requirements of city or county ordinances and~~) The broker's license must be prominently displayed (~~therein. In addition, any branch office must comply with the zoning requirements of city or county ordinances~~). Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative

noncriminal suit, action, or proceeding against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall not be effective unless the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, no later than the next business day sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director.

Sec. 24. RCW 19.146.265 and 1993 c 468 s 18 are each amended to read as follows:

A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different 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 a licensed mortgage broker authorized by the mortgage broker to perform the duties of a branch manager))~~ meets the experience and educational requirements for branch managers as established by rule of the director.

Sec. 25. RCW 19.146.100 and 1987 c 391 s 12 are each amended to read as follows:

~~((The commission by any person of))~~ The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

Sec. 26. RCW 19.146.280 and 1993 c 468 s 21 are each amended to read as follows:

(1) There is established the mortgage brokerage commission consisting of five commission members who shall act in an advisory capacity to the director on mortgage brokerage issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers. At least three of the commission members shall be mortgage brokers required to apply for a mortgage brokers license under this chapter and at least one shall be exempt from licensure under RCW 19.146.020(1) (f) ~~((or (g)))~~. No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, ~~((the attorney general, or a designee, and))~~ the director~~((;))~~ or a designee~~((;))~~ shall serve as an ex officio,

nonvoting member(s) of the commission. Voting members of the commission shall serve for two-year terms with three of the initial commission members serving one-year terms. The department shall provide staff support to the commission.

(3) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the ~~((mortgage brokers' licensing account created in RCW 19.146.270))~~ banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(4)~~((a))~~ The commission shall advise the director on the characteristics and needs of the mortgage brokerage profession. ~~((In addition to its advisory capacity, the commission shall review all state and federal provisions governing mortgage brokers and shall prepare a report:~~

~~(i) Summarizing state and federal statutes and regulations governing mortgage brokers;~~

~~(ii) Identifying the type and magnitude of complaints arising with regard to the practices of mortgage brokers operating in this state;~~

~~(iii) Reviewing the detrimental and beneficial effects of state licensing, bonding, training, experience, and educational requirements for mortgage brokers;~~

~~(iv) Considering the appropriate location within state government to exercise regulatory authority and administer a licensing program; and~~

~~(v) Containing recommended legislation that adopts ongoing state licensing requirements for mortgage brokers.~~

~~(b) In preparing its report, the commission shall solicit comments from the mortgage broker industry, the department of licensing, the attorney general's office, other state regulators, and residential mortgage loan consumers. The committee shall submit its report to the labor and commerce committee of the senate and the financial institutions and insurance committee of the house of representatives by December 1, 1993.)~~

(5) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. The department shall report its findings to the senate committee on labor and commerce and house of representatives committee on financial institutions and insurance along with recommendations for any changes in the licensing requirements of this chapter, no later than December 1, 1996.

NEW SECTION. Sec. 27. The following acts or parts of acts are each repealed:

(1) RCW 19.146.270 and 1993 c 468 s 19; and

(2) 1993 c 468 s 27 (uncodified).

NEW SECTION. Sec. 28. 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. 29. 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 section 5 of this act which shall take effect June 1, 1994.

Passed the Senate February 7, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 34

[Substitute Senate Bill 6098]

DAIRY INSPECTION PROGRAM CONTINUED

AN ACT Relating to the dairy inspection program; and amending RCW 15.36.105 and 15.36.107.

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

Sec. 1. RCW 15.36.105 and 1993 sp.s. c 19 s 1 are each amended to read as follows:

There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk plant receiving the milk for processing. This shall include milk plants that produce their own milk for processing and milk plants that receive milk from other sources. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

~~((This section shall take effect July 1, 1992, and shall expire June 30, 1994.))~~ This section shall expire June 30, 1995.

Sec. 2. RCW 15.36.107 and 1992 c 160 s 2 are each amended to read as follows:

(1) There is created a dairy inspection program advisory committee. The committee shall consist of nine members. The committee shall be appointed by the director from names submitted by dairy producer organizations or from handlers of milk products. The committee shall consist of four members who are producers of milk or their representatives, and four members who are handlers or their representatives, and one member who must be a producer-handler.

(2) The purpose of this advisory committee is to assist the director by providing recommendations regarding the dairy inspection program, that are consistent with the pasteurized milk ordinance. The advisory committee shall (a, review and evaluate the program including the efficiency of the administration of the program, the adequacy of the level of inspection staff, the ratio of inspectors to number of dairy farm inspections per year, and the ratio of inspectors to management employees; and (b) consider alternatives to the state program, which may include privatization of various elements of the inspection program.

(3) The committee shall meet as necessary to complete its work. Meetings of the committee are subject to the open public meetings act.

~~((4) Not later than October 15, 1992, the advisory committee shall issue a preliminary report of its findings to the dairy industry. The committee shall solicit comments from the dairy industry which shall be reflected in the committee's final report.~~

~~(5) Not later than December 1, 1992, the advisory committee shall report to the agricultural committees of the house of representatives and senate its recommendations for long term structure and funding of the dairy inspection program:))~~

Passed the Senate February 10, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 35

[Senate Bill 6135]

PSYCHOLOGISTS—REVISED DISCIPLINARY AND LICENSING PROVISIONS

AN ACT Relating to psychologists; amending RCW 18.83.010, 18.83.050, 18.83.100, 18.83.135, 18.83.155, 18.83.910, and 18.83.911; and repealing RCW 18.83.025 and 18.83.168.

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

Sec. 1. RCW 18.83.010 and 1991 c 3 s 193 are each amended to read as follows:

When used in this chapter:

(1) The "practice of psychology" means the ~~((application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of evaluation, group relations and behavior adjustment,~~

including but not limited to: (a) Counseling and guidance; (b) use of psychotherapeutic techniques with clients who have adjustment problems in the family, at school, at work or in interpersonal relationships; (c) measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes and skills)) observation, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purposes of preventing or eliminating symptomatic or maladaptive behavior and promoting mental and behavioral health. It includes, but is not limited to, providing the following services to individuals, families, groups, organizations, and the public, whether or not payment is received for services rendered:

(a) Psychological measurement, assessment, and evaluation by means of psychological, neuropsychological, and psychoeducational testing;

(b) Diagnosis and treatment of mental, emotional, and behavioral disorders, and psychological aspects of illness, injury, and disability; and

(c) Counseling and guidance, psychotherapeutic techniques, remediation, health promotion, and consultation within the context of established psychological principles and theories.

This definition does not include the teaching of principles of psychology for accredited educational institutions, or the conduct of research in problems of human or animal behavior.

Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(2) "Secretary" means the secretary of health.

(3) "Board" means the examining board of psychology.

~~(4) ("Committee" means the disciplinary committee established by the board.~~

~~(5)) "Department" means the department of health.~~

Sec. 2. RCW 18.83.050 and 1991 c 3 s 196 are each amended to read as follows:

(1) The board shall adopt such rules as it deems necessary to carry out its functions.

(2) The board shall examine the qualifications of applicants for licensing under this chapter, to determine which applicants are eligible for licensing under this chapter and shall forward to the secretary the names of applicants so eligible.

(3) The board shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examinations and shall require both written and oral examinations of each applicant, except as provided in RCW 18.83.170. The board may allow applicants to take the written examination upon the granting of their doctoral degree before completion of their internship for supervised experience.

(4) The board shall keep a complete record of its own proceedings, of the questions given in examinations, of the names and qualifications of all applicants, and the names and addresses of all licensed psychologists. The examination

paper of such applicant shall be kept on file for a period of at least one year after examination.

(5) The board shall, by rule, adopt a code of ethics for psychologists which is designed to protect the public interest.

~~(6) ((The board shall create a disciplinary committee within the board for the purposes of hearing, examining, and ruling on complaints and evidence of unethical conduct or practices brought by the public, other psychologists, organizations, corporations, public or private agencies, or officers, agencies, or instrumentalities of state, county, or local governments.~~

~~(7))~~ The board may require that persons licensed under this chapter as psychologists obtain and maintain professional liability insurance in amounts determined by the board to be practicable and reasonably available.

Sec. 3. RCW 18.83.100 and 1986 c 27 s 5 are each amended to read as follows:

Failure to renew a license as provided in this chapter ~~((shall suspend such))~~ expires the license. A license holder whose license has ~~((been suspended))~~ expired for failure to renew may reinstate such license by paying to the state treasurer the renewal fees for all of the years in which such failure occurred, together with a renewal fee for the current year, but not to exceed five years. However, no renewal license shall be issued unless the board shall find that the applicant has not violated any provision of this chapter since his or her license was ~~((suspended))~~ expired.

Sec. 4. RCW 18.83.135 and 1992 c 12 s 1 are each amended to read as follows:

~~((The disciplinary committee shall meet at least once each year or upon the call of the chairperson at such time and place as the chairperson designates. A quorum for transaction of any business shall consist of three members, one of whom must be a public member.~~

~~The members of the disciplinary committee shall be immune from suit in any action, civil or criminal, based upon its disciplinary proceedings or other official acts performed in good faith as members of the committee.)~~

In addition to the authority prescribed under RCW 18.130.050, the ~~((committee))~~ board shall have the following authority:

(1) To maintain records of all activities, and to publish and distribute to all psychologists at least once each year abstracts of significant activities of the committee; and

(2) To obtain the written consent of the complaining client or patient or their legal representative, or of any person who may be affected by the complaint, in order to obtain information which otherwise might be confidential or privileged.

~~((3) Whenever the workload of the committee requires, the board may request that the secretary appoint pro tempore members. While serving as members pro tempore persons shall have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of the committee.)~~

Sec. 5. RCW 18.83.155 and 1987 c 150 s 54 are each amended to read as follows:

The ~~((committee))~~ board shall report to appropriate national and state organizations which represent the profession of psychology any disciplinary action ~~((taken pursuant to an investigation or hearing that finds a licensee has committed unprofessional or unethical conduct)).~~

Sec. 6. RCW 18.83.910 and 1990 c 297 s 7 are each amended to read as follows:

The powers and duties of the examining board of psychology shall be terminated on June 30, ~~((1995))~~ 2004, as provided in RCW 18.83.911.

Sec. 7. RCW 18.83.911 and 1990 c 297 s 8 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ~~((1996))~~ 2005:

(1) Section 76, chapter 279, Laws of 1984, section 2, chapter 27, Laws of 1986, section 1, chapter 226, Laws of 1989 and RCW 18.83.035;

(2) Section 77, chapter 279, Laws of 1984 and RCW 18.83.045;

(3) Section 5, chapter 305, Laws of 1955, section 5, chapter 70, Laws of 1965, section 78, chapter 279, Laws of 1984, section 3, chapter 27, Laws of 1986 and RCW 18.83.050; and

(4) Section 21, chapter 70, Laws of 1965, section 19, chapter 199, Laws of 1969 ex. sess., section 48, chapter 34, Laws of 1975-'76 2nd ex. sess., section 10, chapter 168, Laws of 1983, section 48, chapter 287, Laws of 1984 and RCW 18.83.051.

NEW SECTION. **Sec. 8.** The following acts or parts of acts are each repealed:

(1) RCW 18.83.025 and 1991 c 3 s 194 & 1984 c 279 s 87; and

(2) RCW 18.83.168 and 1986 c 27 s 7.

Passed the Senate February 10, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 36

[Senate Bill 6141]

PUBLIC EMPLOYEES' BENEFITS BOARD

AN ACT Relating to composition of the public employees' benefits board; amending RCW 41.05.055; and declaring an emergency.

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

Sec. 1. RCW 41.05.055 and 1993 c 492 s 217 are each amended to read as follows:

(1) The public employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for state employees and school district employees.

(2) ~~((Effective January 1, 1995,))~~ The board shall be composed of nine members appointed by the governor as follows:

(a) Two representatives of state employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) Two representatives of school district employees, one of whom shall represent an association of school employees and one of whom is retired, and represents an organized group of retired school employees;

(c) Four members with experience in health benefit management and cost containment; and

(d) The administrator.

~~((Prior to January 1, 1995, the composition of the public employees' benefits board shall reflect its composition on January 1, 1993.))~~

(3) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The administrator shall serve as chair of the board. Meetings of the board shall be at the call of the chair.

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 February 14, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 37

[Senate Bill 6215]

PUBLIC SERVICE COMPANIES—COMPLAINTS

AN ACT Relating to public service companies; amending RCW 81.04.110, 81.04.385, and 81.04.405; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to clarify that the utilities and transportation commission has the authority to make more efficient

use of its resources, provide quicker resolution of complaints regarding transportation tariff matters, eliminate duplicative hearings on classification and violation matters, and to make certain that criminal proceedings involving alleged violations of transportation tariffs not be dismissed because of confusion regarding whether a defendant has received a classification by the commission.

Sec. 2. RCW 81.04.110 and 1961 c 14 s 81.04.110 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, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service ~~((corporation))~~ company or any person, persons, or entity acting as a public service company in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

When two or more public service ~~((corporations))~~ companies or a person, persons, or entity acting as a public service company, (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))~~ companies 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))~~ company or ~~((corporations))~~ companies 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~~) company 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.

Sec. 3. RCW 81.04.385 and 1961 c 14 s 81.04.385 are each amended to read as follows:

Every officer, agent or employee of any public service company or any person, persons, or entity acting as a public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor.

Sec. 4. RCW 81.04.405 and 1973 c 115 s 2 are each amended to read as follows:

In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission, (~~and~~) every person or corporation violating the provisions of any cease and desist order issued pursuant to RCW 81.04.510, and every person or entity found in violation pursuant to a complaint under RCW 81.04.110, shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for

remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund.

Passed the Senate February 15, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 38

[Substitute Senate Bill 6371]

DEGREE-GRANTING PRIVATE VOCATIONAL SCHOOLS—TUITION RECOVERY

AN ACT Relating to degree-granting authority; amending RCW 28B.85.020, 28B.85.040, and 28C.10.040; and adding new sections to chapter 28B.85 RCW.

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

Sec. 1. RCW 28B.85.020 and 1986 c 136 s 2 are each amended to read as follows:

The board:

(1) Shall adopt by rule minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The board shall adopt the rules in accordance with chapter 34.05 RCW;

(2) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections and examine records of all institutions subject to this chapter;

(3) Shall develop an interagency agreement with the ~~((commission for vocational education or its successor agency))~~ work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs.

Sec. 2. RCW 28B.85.040 and 1986 c 136 s 4 are each amended to read as follows:

(1) An institution or person shall not advertise, offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study, as outlined in the institution's publications. This prohibition shall not apply to honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Except as provided in subsection (1) of this section, this chapter shall not apply to:

(a) Any public college, university, ~~((or other entity))~~ community college, technical college, or institute operating as part of the public higher educational system of this state.

(b) Institutions that have been accredited by an accrediting association recognized by the agency for the purposes of this chapter, provided that an institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption.

(c) Institutions of a religious character, but only as to those education programs devoted exclusively to religious or theological objectives if the programs are represented in an accurate manner in institutional catalogs and other official publications.

(d) Institutions not otherwise exempt which offer only workshops or seminars lasting no longer than three calendar days and for which academic credit is not awarded.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.85 RCW to read as follows:

The board shall deposit all moneys received under section 4 of this act into a separate account in the tuition recovery trust fund established under RCW 43.84.092. Moneys deposited in the fund by the board shall be spent only for the purposes under section 4 of this act. Claims against the fund made by students in degree programs shall be limited to the assets in the board's separate account in the tuition recovery trust fund. Claims against the fund made by students in nondegree programs shall be limited to assets deposited by the work force training and education coordinating board in the tuition recovery trust fund. Disbursements from its account in the fund shall be made on authorization of the board.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.85 RCW to read as follows:

(1) The board shall maintain and administer a separate account for degree-granting private vocational schools in the tuition recovery trust fund established under RCW 43.84.092. The board shall require any degree-granting private

vocational school subject to this chapter to make cash deposits into the board's account in the tuition recovery trust fund in an amount determined by the board.

(2) All funds collected for the board's account in the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a degree-granting private vocational school's degree programs authorized under this chapter, or in the case of a minor, his or her parent or guardian for purposes including but not limited to the settlement of claims related to school closures and complaints filed under RCW 28B.85.090(1). The board's account shall be liable for settlement of claims and costs of administration, but shall not be liable to pay out or recover penalties assessed under RCW 28B.85.100 or 28B.85.110. No liability accrues to the state of Washington from claims made against the fund.

(3) The board shall establish by rule a minimum operating balance that is required to be on deposit in its account in the fund by a specified date and maintained thereafter. If disbursements reduce the account below the minimum amount, each participating degree-granting private vocational school shall be assessed a pro rata share of the deficiency created, based on the incremental scale of each school's liability specified in subsection (5) of this section. The board shall adopt by rule schedules of times and amounts for effecting payments of assessments.

(4) To be and remain authorized under this chapter each degree-granting private vocational school shall, in addition to other requirements under this chapter, make cash deposits into the board's account in the tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(5) The amount of liability that can be satisfied by this account on behalf of each individual degree-granting private vocational school authorized under this chapter shall be established by the board, based on an incremental scale that recognizes the average amount of unearned prepaid tuition paid for degree programs that is in possession of the degree-granting private vocational school.

(6) The account's liability with respect to each participating degree-granting private vocational school commences on the date of its initial deposit into the fund and ceases one year from the date it is no longer authorized under this chapter.

(7) The board shall adopt by rule a matrix for calculating the deposits into the account required of each degree-granting private vocational school.

(8) No vested right or interest in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the board's account in the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. No deposits made into the fund by any degree-granting private vocational school are transferable. If the majority ownership interest in a school is conveyed through sale or other means to different ownership, all contributions made to the date of conveyance accrue to the fund. The new owner commences contributions under provisions applying to new applicants. The board shall maintain its

account in the fund, serve appropriate notices to affected entities when scheduled deposits are due, collect deposits, and make disbursements to settle claims against its account.

(9) To settle claims adjudicated under RCW 28B.85.090(1) and claims resulting when a degree-granting private vocational school ceases to provide educational services, the board may make disbursements from its account following the procedure in this subsection.

(a) The board shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the board to ascertain the names and locations of each potential claimant but the board shall make reasonable inquiries to secure that information from all likely sources. The board shall then proceed to settle the claims on the basis of information in its possession. The board is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

(b) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the board shall be relieved of further duty or action on behalf of the claimant under this chapter.

(c) After verification and review, the board may disburse funds from its account in the tuition recovery trust fund to settle or compromise the claims. However, the liability of its account for claims against the closed degree-granting private vocational school shall not exceed the maximum amount of liability assigned to that degree-granting private vocational school under subsection (5) of this section.

(d) In the instance of claims against a closed school, the board shall seek to recover such disbursed funds from the assets of the defaulted degree-granting private vocational school, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(10) If funds are disbursed to settle claims against a currently authorized degree-granting private vocational school, the board shall make demand upon the authorized school for recovery. The board shall adopt by rule schedules of times and amounts for effecting recoveries. A degree-granting private vocational school's failure to perform subjects its authorization to suspension or revocation under RCW 28B.85.080 in addition to any other remedies available to the board.

Sec. 5. RCW 28C.10.040 and 1986 c 299 s 4 are each amended to read as follows:

The agency:

(1) Shall maintain a list of private vocational schools licensed under this chapter;

(2) Shall adopt rules in accordance with chapter 34.05 RCW to carry out this chapter;

(3) May investigate any entity the agency reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the

agency may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the agency deems relevant or material to the investigation. The agency, including its staff and any other authorized persons, may conduct site inspections and examine records of all schools subject to this chapter;

(4) Shall develop an interagency agreement with the higher education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs.

Passed the Senate February 14, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 39

[Engrossed Senate Bill 6404]

MEDICAL ASSISTANCE FEES AND REIMBURSEMENT—RULE-MAKING EXCLUSION

AN ACT Relating to excluding medical assistance administration fee and reimbursement schedules from the administrative procedure act; and amending RCW 34.05.030.

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

Sec. 1. RCW 34.05.030 and 1993 c 281 s 15 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 34.05.598 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 Washington personnel resources board, the director of personnel, 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 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW.

(5) 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.

Passed the Senate February 14, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 40

[Engrossed Second Substitute Senate Bill 6426]

ELECTRONIC ACCESS TO PUBLIC DISCLOSURE COMMISSION DOCUMENTS—PUBLIC INFORMATION ACCESS POLICY TASK FORCE

AN ACT Relating to public electronic access to government information; amending RCW 42.17.370; adding a new section to chapter 42.17 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 finds that government information is a strategic resource and needs to be managed as such and that broad public access to nonrestricted public information and records must be guaranteed. The legislature further finds that reengineering government processes along with capitalizing on advancements made in digital technology can build greater efficiencies in government service delivery. The legislature further finds that providing citizen electronic access to presently available public documents will allow increased citizen involvement in state policies and empower citizens to participate in state policy decision making.

NEW SECTION. Sec. 2. A new section is added to chapter 42.17 RCW to read as follows:

By January 1, 1995, the public disclosure commission shall design a program for electronic access to public documents filed with the commission. The program may include on-line access to the commission's magic and electronic bulletin board systems, providing information for the internet system, fax-request service, automated telephone service, electronic filing of reports, and other service delivery options. Documents available in the program shall include, but are not limited to, public documents filed with the public disclosure commission, including, but not limited to, commission meeting schedules, financial affairs reports, contribution reports, expenditure reports, and gift reports. Implementation of the program is contingent on the availability of funds.

Sec. 3. RCW 42.17.370 and 1986 c 155 s 11 are each amended to read as follows:

The commission is empowered to:

(1) Adopt, promulgate, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW;

(2) Appoint and set, within the limits established by the committee on agency officials' salaries under RCW 43.03.028, the compensation of an executive director who shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Make from time to time, on its own motion, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt and promulgate a code of fair campaign practices;

(8) Relieve, by rule, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than one thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations in his examination reports concerning those agencies;

(10) After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under RCW 42.17.241(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section. Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order; and

(11) Revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter (reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials), the revisions shall equally affect all thresholds within each category. Revisions shall be adopted as rules under chapter 34.05 RCW. The first revision authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold through December 1985.

(12) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds.

NEW SECTION. Sec. 4. A public information access policy task force is hereby created. The task force shall be composed of: The state librarian or the librarian's designee; the director of the department of information services or the director's designee; four members who are representatives of state and local governmental agencies, appointed by the governor; five representatives of the general public who have experience accessing information electronically or have particular interest in the policies that should govern access to information from public agencies, appointed by the governor; two members of the house of representatives, one from each political party, appointed by the speaker of the

house of representatives; two members of the senate, one from each political party, appointed by the president of the senate; and, at the option of the chief justice of the state's supreme court, one representative of the state's judicial branch appointed by the chief justice. The state librarian or the librarian's designee and the director of information services or the director's designee shall serve as the cochairs of the task force. The department of information services and the state library shall provide staff support for the task force.

The purpose of the task force is to identify specific means of encouraging and establishing widespread, public, electronic access to the public records held by state government and by local governments. For the purposes of the task force's study and recommendations, providing such access to the public does not include providing the type of services beyond access, and beyond providing assistance with that access, that would be provided by a vendor for commercial purposes, including but not limited to providing such services by means of a geographic information system.

The task force shall cease to exist on June 30, 1996.

NEW SECTION. Sec. 5. (1) By December 1, 1994, the task force shall provide its initial recommendations to the legislature and the governor regarding: Protecting the privacy of the citizenry and complying with statutory nondisclosure requirements while providing to the public electronic access to records; the status and availability of records for electronic access; and the availability of various means of electronically linking individual citizens to the records they seek. The initial report shall identify implementation strategies for records found to be immediately available for such access.

(2) By December 1, 1995, the task force shall provide its final recommendations to the legislature and governor. The recommendations shall be consistent with the recommendations provided under subsection (1) of this section and shall include an implementation strategy for providing widespread, public, electronic access to the public records held by state and local governmental entities, deadlines for implementation, and findings as to costs.

(3) Nothing in this section or section 4 of this act precludes records from being made available to the public electronically prior to the dates established for the initial and final reports of the task force.

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 Senate March 7, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 41

[Substitute Senate Bill 6481]

HIGHER EDUCATION SERVICES AND ACTIVITIES
FEES—FUNDS-SHIFTING APPROVAL

AN ACT Relating to services and activities fees; and amending RCW 28B.15.045.

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

Sec. 1. RCW 28B.15.045 and 1990 c 7 s 1 are each amended to read as follows:

The legislature recognizes that institutional governing boards have a responsibility to manage and protect institutions of higher education. This responsibility includes ensuring certain lawful agreements for which revenues from services and activities fees have been pledged. Such lawful agreements include, but are not limited to, bond covenant agreements and other contractual obligations. Institutional governing boards are also expected to protect the stability of programs that benefit students.

The legislature also recognizes that services and activities fees are paid by students for the express purpose of funding student services and programs. It is the intent of the legislature that governing boards ensure that students have a strong voice in recommending budgets for services and activities fees. The boards of trustees and the boards of regents of the respective institutions of higher education shall adopt guidelines governing the establishment and funding of programs supported by services and activities fees. Such guidelines shall stipulate procedures for budgeting and expending services and activities fee revenue. Any such guidelines shall be consistent with the following provisions:

(1) Student representatives from the services and activities fee committee and representatives of the college or university administration shall have an opportunity to address the board before board decisions on services and activities fee budgets and dispute resolution actions are made;

(2) Members of the governing boards shall adhere to the principle that services and activities fee committee desires be given priority consideration on funding items that do not fall into the categories of preexisting contractual obligations, bond covenant agreements, or stability for programs affecting students;

(3) Responsibility for proposing to the administration and the governing board program priorities and budget levels for that portion of program budgets that derive from services and activities fees shall reside with a services and activities fee committee, on which students shall hold at least a majority of the voting memberships, such student members shall represent diverse student interests, and shall be recommended by the student government association or its equivalent. The chairperson of the services and activities fee committee shall be selected by the members of that committee. The governing board shall insure that the services and activities fee committee provides an opportunity for all

viewpoints to be heard at a public meeting during its consideration of the funding of student programs and activities.

(4) The services and activities fee committee shall evaluate existing and proposed programs and submit budget recommendations for the expenditure of those services and activities fees with supporting documents simultaneously to the college or university governing board and administration.

(5) The college or university administration shall review the services and activities fee committee budget recommendations and publish a written response to the services and activities fee committee. This response shall outline potential areas of difference between the committee recommendations and the administration's proposed budget recommendations. This response, with supporting documentation, shall be submitted to the services and activities fee committee in a timely manner to allow adequate consideration.

(6)(a) In the event of a dispute or disputes involving the services and activities fee committee recommendations, the college or university administration shall meet with the services and activities fee committee in a good faith effort to resolve such dispute or disputes prior to submittal of final recommendations to the governing board.

(b) If said dispute is not resolved within fourteen days, a dispute resolution committee shall be convened by the chair of the services and activities fee committee within fourteen days.

(7) The dispute resolution committee shall be selected as follows: The college or university administration shall appoint two nonvoting advisory members; the governing board shall appoint three voting members; and the services and activities fee committee chair shall appoint three student members of the services and activities fee committee who will have a vote, and one student representing the services and activities fee committee who will chair the dispute resolution committee and be nonvoting. The committee shall meet in good faith, and settle by vote any and all disputes. In the event of a tie vote, the chair of the dispute resolution committee shall vote to settle the dispute.

(8) The governing board may take action on those portions of the services and activities fee budget not in dispute in accordance with the customary budget approval timeline established by the board. The governing board shall consider the results, if any, of the dispute resolution committee and shall take action.

(9) Services and activities fees and revenues generated by programs and activities funded by such fees shall be deposited and expended through the office of the chief fiscal officer of the institution.

(10) Services and activities fees and revenues generated by programs and activities funded by such fees shall be subject to the applicable policies, regulations, and procedures of the institution and the budget and accounting act, chapter 43.88 RCW.

(11) All information pertaining to services and activities fees budgets shall be made available to interested parties.

(12) With the exception of any funds needed for bond covenant obligations, once the budget for expending service and activities fees is approved by the governing board, funds shall not be shifted from funds budgeted for associated students or departmentally related categories or the reserve fund until the administration provides written justification to the services and activities fee committee and the governing board, ~~((or))~~ and the governing board and the services and activities fee committee give~~((s-it))~~ their express approval. In the event of a fund transfer dispute among the services and activities fee committee, the administration, or the governing board, said dispute shall be resolved pursuant to subsections (6)(b), (7), and (8) of this section.

(13) Any service and activities fees collected which exceed initially budgeted amounts are subject to subsections (1) through (10) and (12) of this section.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 42

[Engrossed Substitute Senate Bill 6484]

PRODUCT LIABILITY/HAZARDOUS SUBSTANCE CLAIMS

AN ACT Relating to public hazard claims; adding new sections to chapter 4.24 RCW; creating a new section; repealing RCW 4.24.600, 4.24.610, 4.24.620, and 4.16.380; repealing 1993 c 17 s 4 (uncodified); and providing an effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW to read as follows:

The legislature finds that public health and safety is promoted when the public has knowledge that enables members of the public to make informed choices about risks to their health and safety. Therefore, the legislature declares as a matter of public policy that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards to the public. The legislature also recognizes that protection of trade secrets, other confidential research, development, or commercial information concerning products or business methods promotes business activity and prevents unfair competition. Therefore, the legislature declares it a matter of public policy that the confidentiality of such information be protected and its unnecessary disclosure be prevented.

NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW to read as follows:

As used in section 1 of this act and this section:

(1)(a) "Product liability/hazardous substance claim" means a claim for damages for personal injury, wrongful death, or property damage caused by a

product or hazardous or toxic substances, that is an alleged hazard to the public and that presents an alleged risk of similar injury to other members of the public.

(b) "Confidentiality provision" means any terms in a court order or a private agreement settling, concluding, or terminating a product liability/hazardous substance claim, that limit the possession, disclosure, or dissemination of information about an alleged hazard to the public, whether those terms are integrated in the order or private agreement or written separately.

(c) "Members of the public" includes any individual, group of individuals, partnership, corporation, or association.

(2) Except as provided in subsection (4) of this section, members of the public have a right to information necessary for a lay member of the public to understand the nature, source, and extent of the risk from alleged hazards to the public.

(3) Except as provided in subsection (4) of this section, members of the public have a right to the protection of trade secrets as defined in RCW 19.108.010, other confidential research, development, or commercial information concerning products or business methods.

(4)(a) Nothing in this chapter shall limit the issuance of any protective or discovery orders during the course of litigation pursuant to court rules.

(b) Confidentiality provisions may be entered into or ordered or enforced by the court only if the court finds, based on the evidence, that the confidentiality provision is in the public interest. In determining the public interest, the court shall balance the right of the public to information regarding the alleged risk to the public from the product or substance as provided in subsection (2) of this section against the right of the public to protect the confidentiality of information as provided in subsection (3) of this section.

(5)(a) Any confidentiality provisions that are not adopted consistent with the provisions of this section are voidable by the court.

(b) Any confidentiality provisions that are determined to be void are severable from the remainder of the order or agreement notwithstanding any provision to the contrary and the remainder of the order or agreement shall remain in force.

(c) Nothing in section 1 of this act and this section prevents the court from denying the request for confidentiality provisions under other law nor limits the scope of discovery pursuant to applicable court rules.

(6) In cases of third party actions challenging confidentiality provisions in orders or agreements, the court has discretion to award to the prevailing party actual damages, costs, reasonable attorneys' fees, and such other terms as the court deems just.

(7) The following acts or parts of acts are each repealed on the effective date of this section:

(a) RCW 4.24.600 and 1993 c 17 s 1;

(b) RCW 4.24.610 and 1993 c 17 s 2;

(c) RCW 4.24.620 and 1993 c 17 s 3;

(d) RCW 4.16.380 and 1993 c 17 s 5; and

(e) 1993 c 17 s 4 (uncodified).

NEW SECTION. Sec. 3. This act applies to all confidentiality provisions entered or executed with respect to product liability/hazardous substance claims on or after May 1, 1994.

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 May 1, 1994.

Passed the Senate March 10, 1994.

Passed the House March 10, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 43

[Substitute Senate Bill 6558]

AIRCRAFT SALES—TAXATION

AN ACT Relating to the excise taxation of sales of aircraft for use by the United States and foreign governments; and amending RCW 82.08.0262.

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

Sec. 1. RCW 82.08.0262 and 1980 c 37 s 29 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state or airplanes sold to the United States government; also sales of tangible personal property which becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 44

[Senate Bill 6491]

REGIONAL TRANSIT AUTHORITIES BALLOT PROPOSITIONS

AN ACT Relating to regional transit authority propositions; and amending RCW 81.112.030.

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

Sec. 1. RCW 81.112.030 and 1993 sp.s. c 23 s 62 are each amended to read as follows:

Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans

to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before ~~((being))~~ the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to ~~((approve the system and finance plan and))~~ authorize the imposition of ~~((the))~~ taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan ~~((submitted to voters))~~ approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the ~~((plan))~~ projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the ~~((system and financing plan))~~ proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised ~~((plan))~~

proposition or a different proposition to the voters. No single ((system and financing plan)) proposition may be submitted to the voters more than twice. The authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a ((system plan)) proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 45

[Substitute Senate Bill 6505]

PUBLIC TRANSIT—UNLAWFUL CONDUCT

AN ACT Relating to public transit facility security; amending RCW 7.48.140, 9.66.010, 9.91.025, and 7.48.020; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that it is important to the general welfare to protect and preserve public safety in the operation of public transportation facilities and vehicles, in order to protect the personal safety of both passengers and employees. The legislature further finds that public transportation facilities and services will be utilized more fully by the general public if they are assured of personal safety and security in the utilization.

The legislature recognizes that cities, towns, counties, public transportation benefit areas, and other municipalities that offer public transportation services have the independent authority to adopt regulations, rules, and guidelines that regulate conduct in public transportation vehicles and facilities to protect and preserve the public safety in the operation of the vehicles and facilities. The legislature finds that this act is not intended to limit the independent authority to regulate conduct by these municipalities. The legislature, however, further finds that this act is necessary to provide state-wide guidelines that regulate conduct in public transportation vehicles and facilities to further enhance the independent regulatory authority of cities, towns, counties, public transportation benefit areas, and any other municipalities that offer public transportation services.

Sec. 2. RCW 7.48.140 and 1955 c 237 s 1 are each amended to read as follows:

It is a public nuisance:

(1) To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others;

(2) To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street, or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others;

(3) To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

(4) To obstruct or encroach upon public highway, private ways, streets, alleys, commons, landing places, and ways to burying places or to unlawfully obstruct or impede the flow of municipal transit vehicles as defined in RCW 46.04.355 or passenger traffic, access to municipal transit vehicles or stations as defined in RCW 9.91.025(2)(a), or otherwise interfere with the provision or use of public transportation services, or obstruct or impede a municipal transit driver, operator, or supervisor in the performance of that individual's duties;

(5) To carry on the business of manufacturing gun powder, nitroglycerine, or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building erected at the time such business may be commenced;

(6) To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling house;

(7) To erect, continue, or use any building, or other place, for the exercise of any trade, employment, or manufacture, which, by occasioning obnoxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public;

(8) To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place where wines, spirituous, fermented, malt, or other intoxicating liquors are kept for sale or disposal to the public in contravention of law;

(9) For an owner or occupier of land, knowing of the existence of a well, septic tank, cesspool, or other hole or excavation ten inches or more in width at the top and four feet or more in depth, to fail to cover, fence or fill the same, or provide other proper and adequate safeguards: **PROVIDED**, That this section shall not apply to a hole one hundred square feet or more in area or one that is open, apparent, and obvious.

Every person who has the care, government, management, or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for erecting, contriving, causing, continuing, or maintaining such nuisance.

Sec. 3. RCW 9.66.010 and 1971 ex.s. c 280 s 22 are each amended to read as follows:

A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between ~~((men))~~ people or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley ~~((or))~~, highway, or municipal transit vehicle or station; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance.

Sec. 4. RCW 9.91.025 and 1992 c 77 s 1 are each amended to read as follows:

(1) A person is guilty of unlawful bus conduct if while on or in a municipal transit vehicle as defined by RCW 46.04.355 or in or at a municipal transit station and with knowledge that such conduct is prohibited, he or she:

(a) Except while in or at a municipal transit station, smokes or carries a lighted or smoldering pipe, cigar, or cigarette; ~~((or))~~

(b) Discards litter other than in designated receptacles; ~~((or))~~

(c) Plays any radio, recorder, or other sound-producing equipment except that nothing herein shall prohibit the use of such equipment when connected to earphones that limit the sound to individual listeners or the use of a communication device by an employee of the owner or operator of the municipal transit vehicle or municipal transit station; ~~((or))~~

(d) Spits or expectorates; ~~((or))~~

(e) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others except that nothing herein shall prevent a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law; ~~((or))~~

(f) Intentionally obstructs or impedes the flow of municipal transit vehicles or passenger traffic, hinders or prevents access to municipal transit vehicles or stations, or otherwise unlawfully interferes with the provision or use of public transportation services;

(g) Intentionally disturbs others by engaging in loud ((~~or~~), raucous, unruly, harmful, or harassing behavior; or

(h) Destroys, defaces, or otherwise damages property of a municipality as defined in RCW 35.58.272 employed in the provision or use of public transportation services.

(2) For the purposes of this section, "municipal transit station" means all facilities, structures, lands, interest in lands, air rights over lands, and rights of way of all kinds that are owned, leased, held, or used by a ((public agency)) municipality as defined in RCW 35.58.272 for the purpose of providing public transportation services, including, but not limited to, park and ride lots, transit centers and tunnels, and bus shelters.

(3) Unlawful bus conduct is a misdemeanor.

Sec. 5. RCW 7.48.020 and 1891 c 50 s 1 are each amended to read as follows:

Such action may be brought by any person whose property is, or whose patrons or employees are, injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he or she may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate and to deter or prevent the resumption of such nuisance. Such motion shall be allowed, of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined.

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 Senate February 15, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 46

[Substitute Senate Bill 6463]

AGRICULTURE FEES

AN ACT Relating to the department of agriculture; amending RCW 15.58.070, 15.58.080, 22.09.011, 22.09.050, 22.09.055, 22.09.830, 16.57.020, 16.57.350, 15.04.400, 15.04.402, 15.36.110, 16.65.030, 16.65.090, 16.58.050, 16.58.130, and 16.57.220; reenacting and amending RCW 16.57.080 and 16.57.220; reenacting RCW 16.65.030, 16.65.090, 16.58.050, 16.58.130, 16.57.090, 16.57.140, and 16.57.400; creating new sections; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 15.58.070 and 1989 c 380 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person desiring to register a pesticide with the department shall pay to the director an annual registration fee for each pesticide registered by the department for such person. The registration fee for the registration of pesticides for any one person during a calendar year shall be: One hundred five dollars for each of the first twenty-five pesticides registered; one hundred dollars for each of the twenty-sixth through one-hundredth pesticides registered; seventy-five dollars for each of the one hundred first through one hundred fiftieth pesticides registered; and fifty dollars for each additional pesticide registered. In addition, the department may establish by rule a registration fee not to exceed ten dollars for each registered product labeled and intended for home and garden use only. The revenue generated by the home and garden use only fees shall be deposited in the agriculture—local fund, to be used to assist in funding activities of the pesticide incident reporting and tracking review panel. All pesticide registrations expire on December 31st of each year.

(2) A person desiring to register a label where a special local need exists shall pay to the director a nonrefundable application fee of two hundred dollars upon submission of the registration request. In addition, a person desiring to renew an approved special local need registration shall pay to the director an annual registration fee of two hundred dollars for each special local needs label registered by the department for such person. The revenue generated by the special local needs application fees and the special local needs renewal fees shall be deposited in the agricultural local fund to be used to assist in funding the department's special local needs registration activities. All special local needs registrations expire on December 31st of each year.

(3) Any registration approved by the director and in effect on the 31st day of December for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110.

Sec. 2. RCW 15.58.080 and 1989 c 380 s 7 are each amended to read as follows:

If the renewal of a pesticide registration or special needs registration is not filed before January 1st of each year, an additional fee of twenty-five dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that the applicant did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry.

Sec. 3. RCW 22.09.011 and 1989 c 354 s 44 are each amended to read as follows:

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," or "commodities," means: (a) Grains for which inspection standards have been established under the United States grain standards act; (b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and (c) other similar agricultural products for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.05 RCW, or (f) within twenty miles of each other but separated by the border

between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(22) "Original inspection" means an initial, official inspection of a grain or commodity.

(23) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(24) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(25) "Exempt grain dealer" means a grain dealer who purchases less than one hundred thousand dollars of covered commodities annually from producers, and operates under the provisions of RCW 22.09.060.

Sec. 4. RCW 22.09.050 and 1991 c 109 s 25 are each amended to read as follows:

Any application for a license to operate a warehouse shall be accompanied by a license fee of ~~((four))~~ twelve hundred dollars for a terminal warehouse, ~~((three))~~ nine hundred dollars for a subterminal warehouse, and ~~((one))~~ three hundred and fifty dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country warehouse license fee.

If an application for renewal of a warehouse license or licenses is not received by the department prior to the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his or her prior license.

Sec. 5. RCW 22.09.055 and 1991 c 109 s 26 are each amended to read as follows:

An application for a license to operate as a grain dealer shall be accompanied by a license fee of ~~((three))~~ six hundred dollars ~~((unless the applicant is also a licensed warehouseman, in which case the fee for a grain dealer license shall be one hundred fifty dollars))~~. The license fee for exempt grain dealers ~~((exempted from bonding under RCW 22.09.060))~~ shall be ~~((seventy-five))~~ one hundred fifty dollars.

If an application for renewal of a grain dealer or exempt grain dealer license is not received by the department before the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a grain dealer or exempt grain dealer after the expiration of his or her prior license.

Sec. 6. RCW 22.09.830 and 1989 c 354 s 52 are each amended to read as follows:

(1) All moneys collected as ~~((warehouse license fees,))~~ fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsections (2) and (3) of this section, shall be deposited in the grain inspection revolving fund, which is hereby established. The state treasurer is the custodian of the revolving fund. Disbursements from the revolving fund shall be on authorization of the director of the department of agriculture. The revolving fund is subject to the allotment procedure provided in chapter 43.88 RCW, but no appropriation is required for disbursements from the fund. The fund shall be used for all expenses directly

incurred by the (~~commodity inspection division~~) grain inspection program in carrying out the provisions of this chapter. The department may use so much of such fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on July 1, 1963, and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops.

(3) All moneys collected by the grain warehouse audit program, including grain warehouse license fees pursuant to RCW 22.09.050 and 22.09.055, shall be deposited by the director into the grain warehouse audit account, hereby created within the agricultural local fund established in RCW 43.23.230. Moneys collected shall be used to support the grain warehouse audit program.

Sec. 7. RCW 16.57.020 and 1971 ex.s. c 135 s 1 are each amended to read as follows:

The director shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to register a livestock brand shall apply on a form prescribed by the director. Such application shall be accompanied by a facsimile of the brand applied for and a (~~(twenty-five)~~) thirty-five dollar recording fee. The director shall, upon his or her satisfaction that the application and brand facsimile meet(~~(s)~~) the requirements of this chapter and/or rules (~~(and regulations)~~) adopted hereunder, record such brand.

Sec. 8. RCW 16.57.350 and 1959 c 54 s 35 are each amended to read as follows:

The director(~~(, but not his duly appointed representatives,)~~) may adopt such rules (~~(and/or regulations)~~) as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules (~~(and regulations)~~) adopted hereunder. No person shall interfere with the director when he or she is performing or carrying out duties imposed on him or her by this chapter and/or rules (~~(and regulations)~~) adopted hereunder.

Sec. 9. RCW 15.04.400 and 1991 c 280 s 1 are each amended to read as follows:

The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state however, the duty shall not be construed as to diminish the responsibility of the department to fully carry out its assigned regulatory responsibilities to protect the public health and welfare.

Sec. 10. RCW 15.04.402 and 1991 c 280 s 2 are each amended to read as follows:

The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek, consistent with its regulatory responsibilities, to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state.

Sec. 11. RCW 15.36.110 and 1989 c 354 s 17 are each amended to read as follows:

During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined in a laboratory approved by the director: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of nonofficial laboratories which have been officially checked periodically and found satisfactory. Samples of other milk products may be taken and examined in a laboratory approved by the director as often as he or she deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director,

upon his request, with the name of all distributors from whom their milk and milk products are obtained. Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him or her for such examinations.

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days, except sixty days must lapse before an official somatic cell count can be taken. The director shall degrade or suspend the grade A permit whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the standard. A grade A permit shall subsequently be reinstated in notice status upon receipt of sample results that are within the standard for which the suspension occurred.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this plant can again be sold as pasteurized milk or milk products.

Sec. 12. RCW 16.65.030 and 1993 c 354 s 1 are each reenacted to read as follows:

(1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

- (a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and
- (b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

- (a) Markets with an average gross sales volume up to and including ten thousand dollars, a fee of no less than one hundred dollars or more than one hundred fifty dollars;
- (b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a fee of no less than two hundred dollars or more than three hundred fifty dollars; and
- (c) Markets with an average gross sales volume over fifty thousand dollars, a fee of no less than three hundred dollars or more than four hundred fifty dollars.

The fees for public livestock market licensees shall be set by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued.

Sec. 13. RCW 16.65.090 and 1993 c 354 s 2 are each reenacted to read as follows:

The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market or special open consignment horse sale. The director shall set by rule, adopted after a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015, a minimum daily inspection fee that shall be paid to the department by the licensee. Such a fee shall be not less than sixty dollars and not more than ninety dollars.

Sec. 14. RCW 16.58.050 and 1993 c 354 s 3 are each reenacted to read as follows:

The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of no less than five hundred dollars or no more than seven hundred fifty dollars. The actual license fee for a certified feed lot license shall be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted hereunder, the applicant shall be issued a license or a renewal thereof.

Sec. 15. RCW 16.58.130 and 1993 c 354 s 4 are each reenacted to read as follows:

Each licensee shall pay to the director a fee of no less than ten cents but no more than fifteen cents for each head of cattle handled through the licensee's feed lot. The fee shall be set by the director by rule after a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Payment of such fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

Sec. 16. RCW 16.57.080 and 1993 c 354 s 5 are each reenacted and amended to read as follows:

The director shall establish by rule a schedule for the renewal of registered brands. The fee for renewal of the brands shall be no less than twenty-five dollars for each two-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis and may by rule increase the registration and renewal fee for brands by no more than fifty percent subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. At least ~~((one hundred twenty))~~ sixty days before the expiration of a registered brand, the director shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the director shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by the date required by rule shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of the registration fee and a late filing fee to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015, for renewal subsequent to the regular renewal period. The director may at the director's discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant.

Sec. 17. RCW 16.57.090 and 1993 c 354 s 6 are each reenacted to read as follows:

A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The director shall record such instrument upon presentation and payment of a recording fee not to exceed fifteen dollars to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Such recording shall be constructive notice to all the world of the existence and conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of the director's agents to properly record such instrument.

Sec. 18. RCW 16.57.140 and 1993 c 354 s 7 are each reenacted to read as follows:

The owner of a brand of record may procure from the director a certified copy of the record of the owner's brand upon payment of a fee not to exceed seven dollars and fifty cents to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.

Sec. 19. RCW 16.57.220 and 1993 c 354 s 8 are each reenacted and amended to read as follows:

The director shall cause a charge to be made for all brand inspection of cattle and horses required under this chapter and rules adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and shall be paid upon billing by the department and if not shall constitute a prior lien on the cattle or cattle hides or horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection may establish schedules by days and hours when a brand inspector will be on duty to perform brand inspection at established inspection points. The fees for brand inspection shall be not less than fifty cents nor more than seventy-five cents per head for cattle and not less than two dollars nor more than three dollars per head for horses as prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Fees for brand inspection of cattle and horses performed by the director at points other than those designated by the director or not in accord with the schedules established by the director shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. ~~((Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.05 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended.))~~ For the purpose of this

section, actual costs shall mean fifteen dollars per hour and the current mileage rate set by the office of financial management.

Sec. 20. RCW 16.57.400 and 1993 c 354 s 9 are each reenacted to read as follows:

The director may provide by rules and regulations adopted pursuant to chapter 34.05 RCW for the issuance of individual horse and cattle identification certificates or other means of horse and cattle identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse and cattle owner in whose name it is issued.

Horses and cattle identified pursuant to the provisions of this section and the rules and regulations adopted hereunder shall not be subject to brand inspection except when sold at points provided for in RCW 16.57.380. The director shall charge a fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the director has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.05 RCW.

Sec. 21. RCW 16.65.030 and 1993 c 354 s 1 are each amended to read as follows:

(1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock

market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a ~~((fee of no less than))~~ one hundred twenty dollar~~((s or more than one hundred fifty dollars))~~ fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a ~~((fee of no less than))~~ two hundred forty dollar~~((s or more than three hundred fifty dollars))~~ fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a ~~((fee of no less than))~~ three hundred sixty dollar~~((s or more than four hundred fifty dollars))~~ fee.

~~((The fees for public livestock market licensees shall be set by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.))~~

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued.

Sec. 22. RCW 16.65.090 and 1993 c 354 s 2 are each amended to read as follows:

The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market or special open consignment horse sale; PROVIDED, That if in any one sale day the total fees collected for brand inspection do not exceed seventy-two dollars, then such licensee shall pay seventy-two dollars for such brand inspection or as much thereof as the director may prescribe. ~~((The director shall set by rule, adopted after a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015, a minimum daily inspection fee that shall be paid to the department by the licensee. Such a fee shall be not less than sixty dollars and not more than ninety dollars.))~~

Sec. 23. RCW 16.58.050 and 1993 c 354 s 3 are each amended to read as follows:

The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of ~~((no less than five))~~ six hundred dollars ~~((or no more than seven hundred fifty dollars. The actual license fee for a certified feed lot license shall be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015)).~~ Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted hereunder, the applicant shall be issued a license or a renewal thereof.

Sec. 24. RCW 16.58.130 and 1993 c 354 s 4 are each amended to read as follows:

Each licensee shall pay to the director a fee of ~~((no less than ten))~~ twelve cents ~~((but no more than fifteen cents))~~ for each head of cattle handled through the licensee's feed lot. ~~((The fee shall be set by the director by rule after a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.))~~ Payment of such fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

Sec. 25. RCW 16.57.220 and 1993 c 354 s 8 are each amended to read as follows:

The director shall cause a charge to be made for all brand inspection of cattle and horses required under this chapter and rules adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and shall be paid upon billing by the department and if not shall constitute a prior lien on the cattle or cattle hides or horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection may establish schedules by days and hours when a brand inspector will be on duty to perform brand inspection at established inspection points. The fees for brand inspection performed at inspection points according to schedules established by the director shall be ~~((not less than fifty))~~ sixty cents ~~((nor more than seventy five cents))~~ per head for cattle and not ~~((less))~~ more than two dollars ~~((nor more than three dollars))~~ and forty cents per head for horses as prescribed by the director ~~((by rule))~~ subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Fees for brand inspection of cattle and horses performed by the director at points other than those designated by the director or not in accord with the schedules established by the director shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.05

RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended.

NEW SECTION. Sec. 26. The reenactment of sections 12 through 20 of this act constitutes approval of fee increases for which prior legislative approval is required by RCW 43.135.055 (section 8, chapter 2, Laws of 1994, Initiative Measure No. 601).

NEW SECTION. Sec. 27. A task force on livestock brand inspection is hereby created. The task force shall be composed of: Two members of the house of representatives appointed by the speaker of the house of representatives, one from each political party caucus in the house of representatives; two members of the senate appointed by the president of the senate, one from each political party caucus in the senate; the director of agriculture or the director's designee; and citizen members appointed by the speaker of the house of representatives and the president of the senate representing the livestock industry including those who are beef cattle producers, horseowners, dairy cattle farmers, cattle feeders, public livestock market operators, and meat processors.

The task force shall examine means of providing a cost-efficient and effective livestock brand inspection program and shall report its recommendations regarding such a program to the legislature by December 1, 1994.

This section shall expire on June 1, 1995.

NEW SECTION. Sec. 28. Sections 1 through 20, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 29. Sections 21 through 25 of this act shall take effect July 1, 1997.

Passed the Senate February 15, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 47

[Substitute Senate Bill 6561]

MARKETPLACE PROGRAM CONTRACT AUTHORITY

AN ACT Relating to the marketplace program; amending RCW 43.31.526 and 43.31.526; providing an effective date; and declaring an emergency.

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

**Sec. 1. RCW 43.31.526 and 1990 c 57 s 4 are each amended to read as follows:*

(1) The department shall contract with governments, industry associations, or local nonprofit organizations (~~(in at least three economically distressed areas of the state that meet the criteria of an "eligible area" as defined in RCW~~

~~82.60.020(3) to implement the Washington marketplace program in these areas. The department, in order~~) to foster cooperation and linkages between distressed and nondistressed areas and between urban and rural areas, and between Washington and other Northwest states. The department may enter into joint contracts with multiple nonprofit organizations. Contracts with economic development organizations to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas shall be structured by the department and the distressed area marketplace programs. Contracts with economic development organizations shall:

(a) Award contracts based on a competitive bidding process, pursuant to chapter 43.19 RCW; and

~~(b) ((Give preference to nonprofit organizations representing a broad spectrum of community support; and~~

~~(e)))~~ Ensure that each location contain sufficient business activity to permit effective program operation.

The department may require that contractors contribute at least twenty percent local funding.

(2) The contracts with governments, industry associations, or local nonprofit organizations shall be for, but not limited to, the performance of the following services for the Washington marketplace program:

(a) Contacting Washington state businesses to identify goods and services they are currently buying or are planning in the future to buy out-of-state and determine which of these goods and services could be purchased on competitive terms within the state;

(b) Identifying locally sold goods and services which are currently provided by out-of-state businesses;

(c) Determining, in consultation with local business, goods and services for which the business is willing to make contract agreements;

(d) Advertising market opportunities described in (c) of this subsection; ~~((and))~~

(e) Receiving bid responses from potential suppliers and sending them to that business for final selection; and

(f) Establish linkages with federal, regional, and Northwest governments and nonprofit organizations, to foster buying leads and information benefiting Washington suppliers and industry and trade associations.

(3) Contracts may include provisions for charging service fees of businesses that ~~((profit as a result of participation))~~ participate in the program.

(4) The center shall also perform the following activities in order to promote the goals of the program:

(a) Prepare promotional materials or conduct seminars to inform communities and organizations about the Washington marketplace program;

(b) Provide technical assistance to communities and organizations interested in developing an import replacement program;

(c) Develop standardized procedures for operating the local component of the Washington marketplace program;

(d) Provide continuing management and technical assistance to local contractors; and

(e) Report by December 31 of each year to the senate economic development and labor committee and to the house of representatives trade and economic development committee describing the activities of the Washington marketplace program.

*Sec. 1 was vetoed, see message at end of chapter.

Sec. 2. RCW 43.31.526 and 1993 c 280 s 48 are each amended to read as follows:

(1) The department shall contract with governments, industry associations, or local nonprofit organizations (~~in distressed areas of the state that meet the criteria of an "eligible area" as defined in RCW 82.60.020(3) to implement the Washington marketplace program in these areas. The department, in order~~) to foster cooperation and linkages between distressed and nondistressed areas and between urban and rural areas, and between Washington and other Northwest states. The department may enter into joint contracts with multiple nonprofit organizations. Contracts with economic development organizations to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas shall be structured by the department and the distressed area marketplace programs. Contracts with economic development organizations shall:

(a) Award contracts based on a competitive bidding process, pursuant to chapter 43.19 RCW; and

(b) (~~Give preference to nonprofit organizations representing a broad spectrum of community support; and~~

~~(e))~~ Ensure that each location contain sufficient business activity to permit effective program operation.

The department may require that contractors contribute at least twenty percent local funding.

(2) The contracts with governments, industry associations, or local nonprofit organizations shall be for, but not limited to, the performance of the following services for the Washington marketplace program:

(a) Contacting Washington state businesses to identify goods and services they are currently buying or are planning in the future to buy out-of-state and determine which of these goods and services could be purchased on competitive terms within the state;

(b) Identifying locally sold goods and services which are currently provided by out-of-state businesses;

(c) Determining, in consultation with local business, goods and services for which the business is willing to make contract agreements;

(d) Advertising market opportunities described in (c) of this subsection;
(~~and~~)

(e) Receiving bid responses from potential suppliers and sending them to that business for final selection; and

(f) Establish linkages with federal, regional, and Northwest governments, industry associations, and nonprofit organizations to foster buying leads and information benefiting Washington suppliers and industry and trade associations.

(3) Contracts may include provisions for charging service fees of businesses that (~~(profit as a result of participation))~~ participate in the program.

(4) The center shall also perform the following activities in order to promote the goals of the program:

(a) Prepare promotional materials or conduct seminars to inform communities and organizations about the Washington marketplace program;

(b) Provide technical assistance to communities and organizations interested in developing an import replacement program;

(c) Develop standardized procedures for operating the local component of the Washington marketplace program;

(d) Provide continuing management and technical assistance to local contractors; and

(e) Report by December 31 of each year to the appropriate economic development committees of the senate and the house of representatives describing the activities of the Washington marketplace program.

****NEW SECTION. Sec. 3. Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.***

*Sec. 3 was vetoed, see message at end of chapter.

****NEW SECTION. Sec. 4. Section 2 of this act shall take effect July 1, 1994.***

*Sec. 4 was vetoed, see message at end of chapter.

Passed the Senate February 14, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 21, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 21, 1994.

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

"I am returning herewith, without my approval as to sections 1, 3 and 4, Substitute Senate Bill No. 6561 entitled:

"AN ACT Relating to the marketplace program;"

Substitute Senate Bill No. 6561 makes two separate amendments to RCW 43.31.526, section 1 to be effective immediately and section 2 to be effective on July 1, 1994. The purpose of this dual amendment was to make the bill conform with the scheduled merger of the Departments of Fisheries and Wildlife. At the time that Substitute Senate Bill No. 6561 was passed, the merger of these agencies was scheduled to occur on July 1, 1994. With the passage of Senate Bill No. 6346, the merger of these agencies was moved up to March 1, 1994. Therefore, the provisions of section 1 and the related effective dates in sections 3 and 4 are no longer necessary, and for these reasons, I am vetoing sections 1, 3 and 4 of Substitute Senate Bill No. 6561.

With the exception of sections 1, 3 and 4, Substitute Senate Bill No. 6561 is approved."

CHAPTER 48

[Senate Bill 6147]

CHILD ABUSE AND NEGLECT PREVENTION—COUNCIL COMPOSITION

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

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

Sec. 1. RCW 43.121.020 and 1989 c 304 s 4 are each amended to read as follows:

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

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

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

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

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

Passed the Senate February 9, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.

CHAPTER 49

[Substitute Senate Bill 5057]

DOUBLE AMENDMENT CORRECTION—911 SERVICES

AN ACT Relating to correcting a double amendment related to exceptions to the right of privacy; and reenacting and amending RCW 9.73.070.

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

Sec. 1. RCW 9.73.070 and 1991 c 329 s 8 and 1991 c 312 s 1 are each reenacted and amended to read as follows:

(1) The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy.

(2) The provisions of this chapter shall not apply to:

(a) Any common carrier automatic number, caller, or location identification service~~((including an enhanced 911 emergency service))~~ that has been approved by the Washington utilities and transportation commission~~((-));~~ or

(b) A 911 or enhanced 911 emergency service as defined in RCW 82.14B.020, for purposes of aiding public health or public safety agencies to respond to calls placed for emergency assistance.

Passed the Senate February 15, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 50

[Senate Bill 5697]

AMATEUR RADIO—LOCAL REGULATION

AN ACT Relating to radio communication; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.32 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 35.21 RCW to read as follows:

No city or town shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An

ordinance or regulation adopted by a city or town with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose.

NEW SECTION. **Sec. 2.** A new section is added to chapter 35A.21 RCW to read as follows:

No code city shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a code city with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose.

NEW SECTION. **Sec. 3.** A new section is added to chapter 36.32 RCW to read as follows:

No county shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose.

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 January 28, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 51

[Substitute Senate Bill 6000]

ABANDONED VESSELS AT STATE PARK FACILITIES

AN ACT Relating to abandoned vessels; amending RCW 63.21.080; adding a new section to chapter 88.12 RCW; adding a new chapter to Title 88 RCW; and repealing RCW 88.12.370.

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) "Charges" means charges of the commission for moorage and storage, and all other charges related to the vessel and owing to or that become owing to the commission, including but not limited to costs of securing, disposing, or removing vessels, damages to any commission facility, and any costs of sale and related legal expenses for implementing sections 2 and 3 of this act.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Commission facility" means any property or facility owned, leased, operated, managed, or otherwise controlled by the commission or by a person pursuant to a contract with the commission.

(4) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and shall not include the holder of a bona fide security interest.

(5) "Person" means any natural person, firm, partnership, corporation, association, organization, or any other entity.

(6)(a) "Registered owner" means any person that is either: (i) Shown as the owner in a vessel certificate of documentation issued by the secretary of the United States department of transportation under 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a vessel for which a certificate of title has been issued under chapter 88.02 RCW; or (iii) the owner of a vessel registered under the vessel registration laws of another state under which laws the commission can readily identify the ownership of vessels registered with that state.

(b) "Registered owner" also includes: (i) Any holder of a security interest or lien recorded with the United States department of transportation with respect to a vessel on which a certificate of documentation has been issued; (ii) any holder of a security interest identified in a certificate of title for a vessel registered under chapter 88.02 RCW; or (iii) any holder of a security interest in a vessel where the holder is identified in vessel registration information of a state with vessel registration laws that fall within (a)(iii) of this subsection and under which laws the commission can readily determine the identity of the holder.

(c) "Registered owner" does not include any vessel owner or holder of a lien or security interest in a vessel if the vessel does not have visible information affixed to it (such as name and hailing port or registration numbers) that will

enable the commission to obtain ownership information for the vessel without incurring unreasonable expense.

(7) "Registered vessel" means a vessel having a registered owner.

(8) "Secured vessel" means any vessel that has been secured by the commission that remains in the commission's possession and control.

(9) "Unauthorized vessel" means a vessel using a commission facility of any type whose owner has not paid the required moorage fees or has left the vessel beyond the posted time limits, or a vessel otherwise present without permission of the commission.

(10) "Vessel" means every watercraft or part thereof constructed, used, or capable of being used as a means of transportation on the water. It includes any equipment or personal property on the vessel that is used or capable of being used for the operation, navigation, or maintenance of the vessel.

NEW SECTION. Sec. 2. (1) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, and locks, or removal from the water, to secure unauthorized vessels located at or on a commission facility so that the unauthorized vessels are in the possession and control of the commission. At least ten days before securing any unauthorized registered vessel, the commission shall send notification by registered mail to the last registered owner or registered owners of the vessel at their last known address or addresses.

(2) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, locks, or removal from the water, to secure any vessel if the vessel, in the opinion of the commission, is a nuisance, is in danger of sinking or creating other damage to a commission facility, or is otherwise a threat to the health, safety, or welfare of the public or environment at a commission facility. The costs of any such procedure shall be paid by the vessel's owner.

(3) At the time of securing any vessel under subsection (1) or (2) of this section, the commission shall attach to the vessel a readily visible notice or, when practicable, shall post such notice in a conspicuous location at the commission facility in the event the vessel is removed from the premises. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached or posted;

(b) A statement that the vessel has been secured by the commission and that if the commission's charges, if any, are not paid and the vessel is not removed by (the thirty-fifth consecutive day following the date of attachment or posting of the notice), the vessel will be considered abandoned and will be sold at public auction to satisfy the charges;

(c) The address and telephone number where additional information may be obtained concerning the securing of the vessel and conditions for its release; and

(d) A description of the owner's or secured party's rights under this chapter.

(4) With respect to registered vessels: Within five days of the date that notice is attached or posted under subsection (3) of this section, the commission shall send such notice, by registered mail, to each registered owner.

(5) If a vessel is secured under subsection (1) or (2) of this section, the owner, or any person with a legal right to possess the vessel, may claim the vessel by:

(a) Making arrangements satisfactory to the commission for the immediate removal of the vessel from the commission's control or for authorized storage or moorage; and

(b) Making payment to the commission of all reasonable charges incurred by the commission in securing the vessel under subsections (1) and (2) of this section and of all moorage fees owed to the commission.

(6) A vessel is considered abandoned if, within the thirty-five day period following the date of attachment or posting of notice in subsection (3) of this section, the vessel has not been claimed under subsection (5) of this section.

NEW SECTION. Sec. 3. (1) The commission may provide for the public sale of vessels considered abandoned under section 2 of this act. At such sales, the vessels shall be sold for cash to the highest and best bidder.

(2) Before a vessel is sold, the commission shall make a reasonable effort to provide notice of sale, at least twenty days before the day of the sale, to each registered owner of a registered vessel and each owner of an unregistered vessel. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges then owing with respect to the vessel, and a summary of the rights and procedures under this chapter. A notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the commission facility is located. This notice shall include: (a) If known, the name of the vessel and the last owner and the owner's address; and (b) a reasonable description of the vessel. The commission may bid all or part of its charges at the sale and may become a purchaser at the sale.

(3) Before a vessel is sold, any person seeking to redeem a secured vessel may commence a lawsuit in the superior court for the county in which the vessel was secured to contest the commission's decision to secure the vessel or the amount of charges owing. This lawsuit shall be commenced within fifteen days of the date the notification was posted under section 2(3) of this act, or the right to a hearing is deemed waived and the owner is liable for any charges owing the commission. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(4) The proceeds of a sale under this section shall be applied first to the payment of the amount of the reasonable charges incurred by the commission and moorage fees owed to the commission, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If an owner cannot in the exercise of due diligence be located by the commission within one year of the date of the sale, any excess funds from the

sale, following the satisfaction of any bona fide security interest, shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the commission is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lien holder or secured party from asserting a claim for any deficiency owed the lien holder or secured party.

(5) If no one purchases the vessel at a sale, the commission may proceed to properly dispose of the vessel in any way the commission considers appropriate, including, but not limited to, destruction of the vessel or by negotiated sale. The commission may assert a claim against the owner for any charges incurred thereby. If the vessel, or any part of the vessel, or any rights to the vessel, are sold under this subsection, any proceeds from the sale shall be distributed in the manner provided in subsection (4) of this section.

NEW SECTION. Sec. 4. If the full amount of all charges due the commission on an unauthorized vessel is not paid to the commission within thirty days after the date on which notice is affixed or posted under section 2(3) of this act, the commission may bring an action in any court of competent jurisdiction to recover the charges, plus reasonable attorneys' fees and costs incurred by the commission.

NEW SECTION. Sec. 5. The rights granted to the commission under sections 1 through 5 of this act are in addition to any other legal rights the commission may have to secure, hold, and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel.

Sec. 6. RCW 63.21.080 and 1985 c 7 s 125 are each amended to read as follows:

This chapter shall not apply to:

- (1) Motor vehicles under chapter 46.52 RCW;
- (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;
- ~~((and))~~
- (3) Uniform disposition of unclaimed property under chapter 63.29 RCW;
- and
- (4) Secured vessels under chapter 88.— RCW (sections 1 through 5 of this act).

NEW SECTION. Sec. 7. RCW 88.12.370 and 1989 c 393 s 2 are each repealed.

NEW SECTION. Sec. 8. A new section is added to chapter 88.12 RCW to read as follows:

The provisions of RCW 88.12.185 through 88.12.225 do not apply to vessels secured pursuant to chapter 88.— RCW (sections 1 through 5 of this act).

NEW SECTION. Sec. 9. Sections 1 through 5 of this act shall constitute a new chapter in Title 88 RCW.

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 Senate March 5, 1994.
Passed the House March 2, 1994.
Approved by the Governor March 23, 1994.
Filed in Office of Secretary of State March 23, 1994.

CHAPTER 52

[Engrossed Substitute Senate Bill 6461]

OIL SPILL INCIDENTS

AN ACT Relating to oil spill incident commander's liability; amending RCW 88.16.190 and 88.44.180; and adding new sections to chapter 88.44 RCW.

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

Sec. 1. RCW 88.16.190 and 1975 1st ex.s. c 125 s 3 are each amended to read as follows:

(1) Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.

(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:

- (a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons; and
- (b) Twin screws; and
- (c) Double bottoms, underneath all oil and liquid cargo compartments; and
- (d) Two radars in working order and operating, one of which must be collision avoidance radar; and
- (e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

PROVIDED, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That a tanker assigned a deadweight of less than forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 through 88.16.190.

Sec. 2. RCW 88.44.180 and 1990 c 117 s 19 are each amended to read as follows:

Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, officer, employee, incident commander, or agent of the commission in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the members of the commission, its officers, agents, ~~((not))~~ incident commander employees nor the business entities by whom ~~((the members))~~ they are regularly employed may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime.

NEW SECTION. **Sec. 3.** A new section is added to chapter 88.44 RCW to read as follows:

The commission, in the exercise of its powers, may include in an authorized contract, a provision for indemnifying the other contracting party against specific loss, damage, or injury arising out of the performance of the contract and resulting from the fault of the commission, a member, officer, employee, incident commander, or agent thereof. The indemnification shall be limited to the assets of the commission under RCW 88.44.180.

NEW SECTION. **Sec. 4.** A new section is added to chapter 88.44 RCW to read as follows:

The attorney general shall serve as the legal adviser to the commission on all legal questions relating to the duties and activities of the commission.

Passed the Senate February 15, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 53

[Second Substitute Senate Bill 5800]

SEXUAL CONTACT WITH HUMAN REMAINS

AN ACT Relating to violation of human remains; reenacting and amending RCW 9A.44.320; adding a new section to chapter 9A.44 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44 RCW to read as follows:

(1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.

(2) As used in this section:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.

(b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person.

Sec. 2. RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))

Endangering life and property by explosives with threat to human being (RCW 70.74.270)

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Controlled Substance Homicide (RCW 69.50.415)

Sexual Exploitation (RCW 9.68A.040)

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

VIII

Arson 1 (RCW 9A.48.020)

Promoting Prostitution 1 (RCW 9A.88.070)

Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))

Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))

Vehicular Homicide, by being under the influence of intoxicating liquor or any drug or by the operation of any vehicle in a reckless manner (RCW 46.61.520)

VII

Burglary 1 (RCW 9A.52.020)

Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)

Introducing Contraband 1 (RCW 9A.76.140)

Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))

Child Molestation 2 (RCW 9A.44.086)

Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)

Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)

Involving a minor in drug dealing (RCW 69.50.401(f))

- VI Bribery (RCW 9A.68.010)
- Manslaughter 2 (RCW 9A.32.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
- Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))

- V Criminal Mistreatment 1 (RCW 9A.42.020)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (section 1 of this act)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

- IV Residential Burglary (RCW 9A.52.025)
 Theft of Livestock 1 (RCW 9A.56.080)
 Robbery 2 (RCW 9A.56.210)
 Assault 2 (RCW 9A.36.021)
 Escape 1 (RCW 9A.76.110)
 Arson 2 (RCW 9A.48.030)
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 Malicious Harassment (RCW 9A.36.080)
 Threats to Bomb (RCW 9.61.160)
 Willful Failure to Return from Furlough (RCW 72.66.060)
 Hit and Run — Injury Accident (RCW 46.52.020(4))
 Vehicular Assault (RCW 46.61.522)
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 Influencing Outcome of Sporting Event (RCW 9A.82.070)
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 ♣ Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
 Extortion 2 (RCW 9A.56.130)
 Unlawful Imprisonment (RCW 9A.40.040)
 Assault 3 (RCW 9A.36.031)
 Assault of a Child 3 (RCW 9A.36.140)
 Custodial Assault (RCW 9A.36.100)
 Unlawful possession of firearm 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)
 Burglary 2 (RCW 9A.52.030)
 Introducing Contraband 2 (RCW 9A.76.150)
 Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
 - Escape 2 (RCW 9A.76.120)
 - Perjury 2 (RCW 9A.72.030)
 - Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
 - Intimidating a Public Servant (RCW 9A.76.180)
 - Tampering with a Witness (RCW 9A.72.120)
 - Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
 - Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
 - Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
 - Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
 - Theft of livestock 2 (RCW 9A.56.080)
 - Securities Act violation (RCW 21.20.400)
- II
- Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of Stolen Property 1 (RCW 9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - 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.36.045)
 - Escape from Community Custody (RCW 72.09.310)
- I
- Theft 2 (RCW 9A.56.040)
 - Possession of Stolen Property 2 (RCW 9A.56.160)
 - Forgery (RCW 9A.60.020)
 - Taking Motor Vehicle Without Permission (RCW 9A.56.070)
 - Vehicle Prowl 1 (RCW 9A.52.095)

Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
 Malicious Mischief 2 (RCW 9A.48.080)
 Reckless Burning 1 (RCW 9A.48.040)
 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
 False Verification for Welfare (RCW 74.08.055)
 Forged Prescription (RCW 69.41.020)
 Forged Prescription for a Controlled Substance (RCW 69.50.403)
 Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

Passed the Senate February 8, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 54

[Senate Bill 6021]

EMERGENCY SERVICE COMMUNICATION DISTRICTS—CONSOLIDATION AND DISSOLUTION

AN ACT Relating to emergency service communication districts; and amending RCW 82.14B.070.

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

Sec. 1. RCW 82.14B.070 and 1987 c 17 s 1 are each amended to read as follows:

In lieu of providing a county-wide system of emergency service communication, the legislative authority of a county may establish one or more less than county-wide emergency service communication districts within the county for the purpose of providing and funding emergency service communication systems. An emergency service communication district is a quasi-municipal corporation, shall constitute a body corporate, and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

The county legislative authority shall be the governing body of an emergency service communication district. The county treasurer shall act as the ex officio treasurer of the emergency services communication district. The electors of an emergency service communication district are all registered voters residing within the district.

A county legislative authority proposing to consolidate existing emergency service communication districts shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the emergency service communication districts. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the consolidation of the emergency service communication districts. Following the hearing, the county legislative authority may consolidate the emergency service communication districts, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. The county legislative authority shall specify the manner in which consolidation is to be accomplished.

A county legislative authority proposing to dissolve an existing emergency service communication district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the emergency service communication district. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the dissolution of the emergency service communication district. Following the hearing, the county legislative authority may dissolve the emergency service communication district, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. The county legislative authority shall specify the manner in which dissolution is to be accomplished and shall supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness.

Passed the Senate February 8, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 55

[Substitute Senate Bill 6028]

ALCOHOL SALES—LOCAL OPTION ELECTIONS

AN ACT Relating to local option elections within cities, towns, and counties; and amending RCW 66.40.030.

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

Sec. 1. RCW 66.40.030 and 1949 c 5 s 12 are each amended to read as follows:

Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under class H licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under class H licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises ~~((therein))~~ within the election unit licensed under class H licenses. The addition after an election under this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under class H licenses to the new territory. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under class H licenses shall be permitted within such election unit.

Passed the Senate February 7, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 56

[Engrossed Senate Bill 6037]

PUBLIC LANDS AND NATURAL RESOURCES VIOLATIONS—REWARD FOR REPORTING

AN ACT Relating to rewards for information regarding public lands and natural resource violations; and amending RCW 79.01.765. .

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

Sec. 1. RCW 79.01.765 and 1990 c 163 s 8 are each amended to read as follows:

The department of natural resources is authorized to offer and pay a reward not to exceed ~~((one))~~ ten thousand dollars in each case for information regarding violations of any statute or rule ~~((adopted pursuant to any statute))~~ relating to the state's public lands and natural resources ~~((including, but not limited to, Titles 75, 76, 78, and 79 RCW, and any rule adopted pursuant thereto))~~ on those lands, except forest practices under chapter 76.09 RCW. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department of natural resources is authorized to ~~((promulgate))~~ adopt rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. The department is also authorized to adopt rules

establishing the criteria for paying a reward and the amount to be paid. No appropriation shall be required for disbursement.

Passed the Senate March 5, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 57

[Substitute Senate Bill 6188]

VOTER REGISTRATION

AN ACT Relating to voting; amending RCW 29.01.006, 29.04.040, 29.04.070, 29.04.100, 29.04.110, 29.07.010, 29.07.025, 29.07.070, 29.07.080, 29.07.090, 29.07.100, 29.07.115, 29.07.120, 29.07.130, 29.07.140, 29.07.170, 29.07.180, 29.07.260, 29.07.270, 29.07.300, 29.07.400, 29.07.410, 29.08.010, 29.08.050, 29.08.060, 29.10.020, 29.10.040, 29.10.051, 29.10.090, 29.10.100, 29.36.120, 29.36.121, 29.36.122, 29.48.010, and 46.20.205; reenacting and amending RCW 29.10.180; adding a new section to chapter 10.64 RCW; adding a new section to chapter 29.04 RCW; adding new sections to chapter 29.07 RCW; adding new sections to chapter 29.10 RCW; repealing RCW 29.07.015, 29.07.020, 29.07.050, 29.07.060, 29.07.065, 29.07.095, 29.07.105, 29.10.095, and 29.10.080; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 10.64 RCW to read as follows:

Within fourteen days of the entry of a judgment of conviction of an individual for a felony, the clerk of the court shall send a notice of the conviction including the full name of the defendant and his or her residential address to the county auditor or custodian of voting records in the county of the defendant's residence.

Sec. 2. RCW 29.01.006 and 1990 c 59 s 2 are each amended to read as follows:

As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Special ballot" means a ballot issued to a voter at the polling place on election day by the precinct election board, for one of the following reasons:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote.

Sec. 3. RCW 29.04.040 and 1986 c 167 s 2 are each amended to read as follows:

(1) No paper ballot precinct may contain more than three hundred active registered voters. The county legislative authority may divide, alter, or combine precincts so that, whenever practicable, over-populated precincts shall contain no more than two hundred fifty active registered voters in anticipation of future growth.

(2) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (5) of this section, no precinct boundaries may be changed during the period starting on the thirtieth day prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(3) Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred active registered voters, but there shall be at least one voting machine or device for each three hundred active registered voters or major fraction thereof when a state primary or general election is held in an even-numbered year.

(4) On petition of twenty-five or more voters resident more than ten miles from any place of election, the county legislative authority shall establish a separate voting precinct therefor.

(5) The county auditor shall temporarily adjust precinct boundaries when a city annexes county territory to the city. The adjustment shall be made as soon as possible after the approval of the annexation. The temporary adjustment shall be limited to the minimum changes necessary to accommodate the addition of the territory to the city and shall remain in effect only until precinct boundary modifications reflecting the annexation are adopted by the county legislative authority.

The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its

jurisdiction. The limitation may be different for precincts based upon the method of voting used for such precincts and the number may be less than the number established by law, but in no case may the number exceed that authorized by law.

The county legislative authority of each county in the state hereafter formed shall, at their first session, divide their respective counties into election precincts with two hundred fifty active registered voters or less and establish the boundaries of the precincts. The county auditor shall thereupon designate the voting place for each such precinct.

(6) In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW 29.36.013 shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29.62.090.

Sec. 4. RCW 29.04.070 and 1965 c 9 s 29.04.070 are each amended to read as follows:

The secretary of state through ~~((his))~~ the election division shall be the chief election officer for all federal, state, county, city, town, and district elections and it shall be his or her duty to keep records of such elections held in the state and to make such records available to the public upon request, and to coordinate those state election activities required by federal law.

Sec. 5. RCW 29.04.100 and 1975-'76 2nd ex.s. c 46 s 1 are each amended to read as follows:

(1) In the case of voter registration records received through the department of licensing, the identity of the office at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. In the case of voter registration records received through an agency designated under section 26 of this act, the identity of the agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under section 26 of this act is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) All poll books or current lists of registered voters, except original voter registration forms or their images, shall be public records and be made available for inspection under such reasonable rules and regulations as the county auditor may prescribe. The county auditor shall promptly furnish current lists or mailing labels of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information: PROVIDED, That such lists and labels shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value: PROVIDED, HOWEVER, That such lists and labels may

be used for any political purpose. ~~((In the case of political subdivisions which encompass portions of more than one county, the request may be directed to the secretary of state who shall contact the appropriate county auditors and arrange for the timely delivery of the requested information.))~~

Sec. 6. RCW 29.04.110 and 1973 1st ex.s. c 111 s 3 are each amended to read as follows:

Except original voter registration forms or their images, a reproduction of any form of data storage, in the custody of the county auditor, ~~((for))~~ including poll books and precinct lists of registered voters, ~~((including))~~ magnetic tapes or discs, punched cards, and any other form of storage of such books and lists, shall at the written request of any person be furnished to him or her by the county auditor pursuant to such reasonable rules and regulations as the county auditor may prescribe, and at a cost equal to the county's actual cost in reproducing such form of data storage. Any data contained in a form of storage furnished under this section shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value: PROVIDED, HOWEVER, That such data may be used for any political purpose. Whenever the county auditor furnishes any form of data storage under this section, he or she shall also furnish the person receiving the same with a copy of RCW 29.04.120.

NEW SECTION. Sec. 7. A new section is added to chapter 29.04 RCW to read as follows:

Each county auditor shall maintain for at least two years and shall make available for public inspection and copying all records concerning the implementation of programs and activities conducted for the purpose of insuring the accuracy and currency of official lists of eligible voters. These records must include lists of the names and addresses of all persons to whom notices are sent and information concerning whether or not each person has responded to the notices. These records must contain lists of all persons removed from the list of eligible voters and the reasons why the voters were removed.

Sec. 8. RCW 29.07.010 and 1984 c 211 s 3 are each amended to read as follows:

(1) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. ~~((He or she shall))~~ The auditor may appoint a ~~((deputy registrar))~~ registration assistant for each precinct or group of precincts and shall appoint city or town clerks as ~~((deputy registrars))~~ registration assistants to assist in registering persons residing in cities, towns, and rural precincts within the county.

(2) In addition, the auditor ~~((shall))~~ may appoint a ~~((deputy registrar))~~ registration assistant for each common school. ~~((A deputy registrar in a common school shall be a school official or school employee.))~~ The auditor ~~((shall))~~ may appoint a ~~((deputy registrar))~~ registration assistant for each fire station ~~((that he~~

~~or she finds is convenient to the public for registration purposes and is adequately staffed so that registration would not be a great inconvenience for the fire station personnel. A fire station appointee shall be a person employed at the station)).~~ All common schools, fire stations, and public libraries shall make voter registration application forms available to the public.

~~(3) ((The auditor shall also appoint deputy registrars to provide voter registration services for each state office providing voter registration under RCW 29.07.025.~~

~~(4) A deputy registrar shall))~~ A registration assistant must be a registered voter. Except for city and town clerks, each ((registrar shall)) registration assistant holds office at the pleasure of the county auditor.

~~((5))~~ (4) The county auditor shall be the custodian of the official registration records of ((each precinct within)) that county.

NEW SECTION. Sec. 9. A new section is added to chapter 29.07 RCW to read as follows:

"Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes the applicant's name, complete residence address, date of birth, and a signature attesting to the truth of the information provided on the application. All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote.

Sec. 10. RCW 29.07.025 and 1984 c 211 s 2 are each amended to read as follows:

~~(1) ((The director or chief administrative officer of))~~ Each state agency designated under section 26 of this act shall provide voter registration services for employees and the public within each office of that agency ((which is convenient to the public for registration purposes except where, or during such times as, the director or officer finds that there would be a great inconvenience to the public or to the operation of the agency due to inadequate staff time for this purpose)).

(2) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

(3) The secretary of state shall design and provide standard voter registration forms for use by these state agencies.

Sec. 11. RCW 29.07.070 and 1990 c 143 s 7 are each amended to read as follows:

Except as provided under RCW 29.07.260, an applicant for voter registration shall ~~((provide a voter registrar with))~~ complete an application providing the following information concerning his or her qualifications as a voter in this state:

(1) The address of the last former registration of the applicant as a voter in the state;

- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;
- (7) A declaration that the applicant is a citizen of the United States; and
- (8) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The auditor shall not register the applicant until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the auditor shall not register the applicant to vote.

The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly ((providing)) provide false information on this voter registration form or knowingly ((making)) make a false declaration about your qualifications for voter registration ((is)) you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine ((not to exceed)) of up to ten thousand dollars, or ((by)) both ((such)) imprisonment and fine."

Sec. 12. RCW 29.07.080 and 1990 c 143 s 8 are each amended to read as follows:

For voter registrations executed under ~~((this section))~~ RCW 29.07.070, the ~~((registrant))~~ registrant shall ~~((require the applicant to))~~ sign the following oath:

"I declare that the facts ~~((relating to my qualifications as a voter recorded))~~ on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of ~~((an infamous crime))~~ a felony, I will have lived in Washington at this ((state, county, and precinct)) address for thirty days immediately ~~((preceding))~~ before the next election at which I ~~((offer to))~~ vote, and I will be at least eighteen years ~~((of age at the time of voting))~~ old when I vote."

~~((The registration officer shall attest and date this oath in the following form:~~

~~"Subscribed and sworn to before me this day of, 19. . . ,
 Registration Officer.")~~

Sec. 13. RCW 29.07.090 and 1973 1st ex.s. c 21 s 5 are each amended to read as follows:

At the time of registering ~~((any)),~~ a voter~~((each registration officer))~~ shall ~~((require him to))~~ sign his or her name upon a signature card ~~((containing spaces for his surname))~~ to be transmitted to the secretary of state. The voter shall also provide his or her first name followed by ~~((his given))~~ the last name or names and the name of the county ~~((and city or town, with post office and street address, and the name or number of the precinct,))~~ in which ~~((the voter))~~ he or she is registered.

Sec. 14. RCW 29.07.100 and 1971 ex.s. c 202 s 13 are each amended to read as follows:

~~((Registration officers in incorporated))~~ In cities and towns, clerks shall ~~((keep their respective offices open for registration of voters during the days and hours when the same are open for the transaction of public business. PROVID- ED, That in cities of the first class, the county auditor shall establish on a permanent basis at least one registration office in each legislative district that lies wholly or partially within the city limits by appointing persons as deputy registrars who may register any eligible elector of such city.~~

Each such deputy registrar, except for city and town clerks, shall hold office at the pleasure of the county auditor and shall maintain a fixed place, conveniently located, for the registration of voters but nothing in this section shall preclude door to door registration including registration from a portable office as in a trailer) provide voter registration assistance during the normal business hours of the office.

Sec. 15. RCW 29.07.115 and 1971 ex.s. c 202 s 23 are each amended to read as follows:

A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a designee at least once weekly~~((the deputy registrars shall transmit all registration records properly completed to the county auditor))~~.

Sec. 16. RCW 29.07.120 and 1971 ex.s. c 202 s 16 are each amended to read as follows:

On each Monday next following the registration of any voter each county auditor shall transmit all cards required by RCW 29.07.090 ~~((which have been executed and))~~ received in ~~((his))~~ the auditor's office during the prior week to the secretary of state for filing ~~((in his office. Each lot must be accompanied by the certificate of the registrar that the cards so transmitted are the original cards, that they were signed by the voters whose names appear thereon and that the voters are registered in the precincts and from the addresses shown thereon)).~~ The secretary of state may exempt a county auditor who is providing electronic voter registration and electronic voter signature information to the secretary of state from the requirements of this section.

Sec. 17. RCW 29.07.130 and 1991 c 81 s 21 are each amended to read as follows:

(1) The cards required by RCW 29.07.090 shall be kept on file in the office of the secretary of state in such manner as will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. Such an automated file may be used only for the purpose authorized for the use of the cards.

(2) The county auditor shall have custody of the voter registration records for each county. The original voter registration form, as established by RCW 29.07.070, shall be filed alphabetically without regard to precinct and shall be considered confidential and unavailable for public inspection and copying. An automated file of all registered voters shall be maintained pursuant to RCW 29.07.220. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(3) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address of a registered voter or addresses of a group of voters are available for public inspection and copying except to the extent that the address of a particular voter is not so available under RCW 42.17.310(1)(bb). The political jurisdictions within which a voter or group of voters reside are also available for public inspection and copying except that the political jurisdictions within which a particular voter resides are not available for such inspection and copying if the address of the voter is not so available under RCW 42.17.310(1)(bb). No other information from voter registration records or files is available for public inspection or copying.

Sec. 18. RCW 29.07.140 and 1990 c 143 s 9 are each amended to read as follows:

(1) The secretary of state shall specify by rule the ~~((form))~~ format of ~~((the))~~ all voter registration ~~((records required under RCW 29.07.070 and 29.07.260))~~ applications. These ~~((forms))~~ applications shall be compatible with existing voter registration records. An applicant for voter registration shall be required to complete only one ~~((form))~~ application and to provide the required information other than his or her signature no more than one time. These ~~((forms))~~ applications shall also contain information for the voter to transfer his or her registration.

Any application format specified by the secretary for use in registering to vote in state and local elections shall satisfy the requirements of the National

Voter Registration Act of 1993 (P.L. 103-31) for registering to vote in federal elections.

(2) The secretary of state shall adopt by rule a uniform data format for transferring voter registration records on machine-readable media.

(3) All registration ~~((forms))~~ applications required under RCW 29.07.070 and 29.07.260 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing.

(4) The secretary of state shall produce and distribute any instructional material and other supplies needed to implement RCW 29.07.260 through 29.07.300 and 46.20.155.

(5) Any notice or statement that must be provided under the National Voter Registration Act of 1993 (P.L. 103-31) to prospective registrants concerning registering to vote in federal elections shall also be provided to prospective registrants concerning registering to vote under this title in state and local elections as well as federal elections.

Sec. 19. RCW 29.07.170 and 1971 ex.s. c 202 s 21 are each amended to read as follows:

~~((Immediately))~~ Upon closing ((his)) of the registration files preceding an election, the county auditor shall ((insert therein his certificate as to the authenticity thereof. He shall then)) deliver the ((registration records for each precinct thus certified)) precinct lists of registered voters to the inspector or one of the judges ((thereof at the proper)) of each precinct or group of precincts located at the polling place before the polls open.

Sec. 20. RCW 29.07.180 and 1971 ex.s. c 202 s 22 are each amended to read as follows:

The ~~((registration records of))~~ precinct list of registered voters for each precinct or group of precincts delivered to the precinct election officers for use on the day of an election held in that precinct shall be returned by them to the county auditor upon the completion of the count of the votes cast in the precinct at that election. While in possession of the county auditor they shall be open to public inspection under such reasonable rules and regulations as may be prescribed therefor.

Sec. 21. RCW 29.07.260 and 1990 c 143 s 1 are each amended to read as follows:

(1) A person may register to vote or transfer a voter registration when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote or transfer a voter registration under this section, the applicant shall provide the following:

- (a) His or her full name;
- (b) Whether the address in the driver's license file is the same as his or her residence for voting purposes;

(c) The address of the residence for voting purposes if it is different from the address in the driver's license file;

(d) His or her mailing address if it is not the same as the address in (c) of this subsection;

(e) Additional information on the ~~((physical))~~ geographic location of that voting residence if it is only identified by route or box;

(f) The last address at which he or she was registered to vote in this state;

(g) A declaration that he or she is a citizen of the United States; and

(h) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and to prevent duplicate or fraudulent voter registrations.

(3) The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly ~~((providing))~~ provide false information on this voter registration form or knowingly ~~((making))~~ make a false declaration about your qualifications for voter registration ~~((is))~~ you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine ~~((not to exceed))~~ of up to ten thousand dollars, or ~~((by))~~ both ~~((such))~~ imprisonment and fine."

(4) The applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath:

"I declare that the facts ~~((relating to my qualifications as a voter recorded))~~ on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of ~~((an infamous crime))~~ a felony, I will have lived in ~~((this state, county, and precinct))~~ Washington at this address for thirty days ~~((immediately preceding))~~ before the next election at which I ~~((offer to))~~ vote, and I will be at least eighteen years ~~((of age at the time of voting))~~ old when I vote."

(5) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration.

Sec. 22. RCW 29.07.270 and 1990 c 143 s 2 are each amended to read as follows:

(1) The secretary of state shall provide for the voter registration forms submitted under RCW 29.07.260 to be collected from each driver's licensing facility ~~((at least once each week))~~ within five days of their completion.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, and sex of the applicant and the driver's license number, the date on which the application for

voter registration or transfer was submitted, and the location of the office at which the application was submitted.

(3) The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, and sex of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.

(4) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved within the county, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. If the information indicates that the new address is outside the voter's original county, the county auditor shall send the voter a registration by mail form at the voter's new address and advise the voter of the need to reregister in the new county. The auditor shall then place the voter on inactive status.

Sec. 23. RCW 29.07.300 and 1990 c 143 s 5 are each amended to read as follows:

(1) The secretary of state shall deliver the files and lists of voter registration information produced under RCW 29.07.290 to the county auditors no later than ten days after the date on which that information was to be transmitted under RCW 29.07.270(1). The county auditor shall process these records in the same manner as voter registrations executed under RCW 29.07.080.

(2) If a registrant has indicated on the voter registration application form that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

Sec. 24. RCW 29.07.400 and 1991 c 81 s 11 are each amended to read as follows:

If any (~~registrar or deputy registrar~~) county auditor or registration assistant:

(1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or

(2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or

(3) Enters or causes or permits to be entered on the voter registration records the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or

(4) Destroys, mutilates, conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law, he or she is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 25. RCW 29.07.410 and 1991 c 81 s 12 are each amended to read as follows:

Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names; ((or))

(5) Knowingly causes himself or herself to be registered in two or more counties;

(6) Offers to pay another person to assist in registering voters, where payment is based on a fixed amount of money per voter registration;

(7) Accepts payment for assisting in registering voters, where payment is based on a fixed amount of money per voter registration; or

(8) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title, is guilty of a class C felony punishable under RCW 9A.20.021.

NEW SECTION. Sec. 26. A new section is added to chapter 29.07 RCW to read as follows:

The governor, in consultation with the secretary of state, shall designate agencies to provide voter registration services in compliance with federal statutes.

NEW SECTION. Sec. 27. A new section is added to chapter 29.07 RCW to read as follows:

(1) A person may register to vote or transfer a voter registration when he or she applies for service or assistance and with each renewal, recertification, or change of address at agencies designated under section 26 of this act.

(2) A prospective applicant shall initially be offered a form adopted by the secretary of state that is designed to determine whether the person wishes to register to vote. The form must comply with all applicable state and federal statutes regarding content.

The form shall also contain a box that may be checked by the applicant to indicate that he or she declines to register.

If the person indicates an interest in registering or has made no indication as to a desire to register or not register to vote, the person shall be given a mail-in voter registration application or a prescribed agency application as provided by section 28 of this act.

NEW SECTION. Sec. 28. A new section is added to chapter 29.07 RCW to read as follows:

(1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents.

(3) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(4) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state.

NEW SECTION. Sec. 29. A new section is added to chapter 29.07 RCW to read as follows:

The secretary of state shall:

(1) Coordinate with the designated agencies and county auditors on the implementation of sections 27 and 28 of this act;

(2) Adopt rules governing the delivery and processing of voter registration application forms submitted under sections 27 and 28 of this act and ensuring the integrity of the voter registration process and of the integrity and confidentiality of data on registered voters collected under sections 27 and 28 of this act.

Sec. 30. RCW 29.08.010 and 1993 c 434 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise((;)).

(1) "By mail" means delivery of a completed original voter registration ~~((form))~~ application by mail~~((;))~~ or by personal delivery~~((; or by courier to a~~

county auditor)). The secretary of state, in consultation with the county auditors, may adopt rules to develop a process to receive and distribute these applications.

(2) For voter registration applicants, "date of mailing" means the date of the postal cancellation on the voter registration application. This date will also be used as the date of application for the purpose of meeting the registration cutoff deadline. If the postal cancellation date is illegible then the date of receipt by the elections official is considered the date of application. If an application is received by the elections official by the close of business on the fifth day after the cutoff date for voter registration and the postal cancellation date is illegible, the application will be considered to have arrived by the cutoff date for voter registration.

Sec. 31. RCW 29.08.050 and 1993 c 434 s 5 are each amended to read as follows:

In addition to the information required under RCW 29.07.070, when registering to vote by mail under this chapter, the applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath: "I declare that the facts ~~((relating to my qualifications as a voter recorded))~~ on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of ~~((an infamous crime))~~ a felony, I will have lived in ~~((this state, county, and precinct))~~ Washington at this address for thirty days immediately ~~((preceding))~~ before the next election at which I ~~((offer to))~~ vote, and I will be at least eighteen years ~~((of age at the time of voting))~~ old when I vote."

The voter registration by mail form shall provide, in a conspicuous place, the following warning: "If you knowingly ~~((providing))~~ provide false information on this voter registration form or knowingly ~~((making))~~ make a false declaration about your qualifications for voter registration ~~((is))~~ you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine ~~((not to exceed))~~ of up to ten thousand dollars, or ~~((by))~~ both ~~((such))~~ imprisonment and fine."

Sec. 32. RCW 29.08.060 and 1993 c 434 s 6 are each amended to read as follows:

(1) On receipt of an application for voter registration under this chapter, the county auditor shall review the application to determine whether the information supplied is complete. An application that contains the applicant's name, complete valid residence address, date of birth, and signature attesting to the truth of the information provided on the application is complete. If it is not complete, the auditor shall promptly ~~((send))~~ mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant or is returned as undeliverable the auditor shall not place the name of the applicant on the county voter list. If the applicant provides the required

information, the applicant shall be registered to vote as of the date of mailing of the original voter registration application.

(2) If the information is complete, the applicant is considered to be registered to vote as of the date of ~~((the application's postmark. If there is no postmark or if the postmark is illegible, the applicant is registered on the date the complete and correct application was received by the auditor))~~ mailing. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, ~~((a voter registration card))~~ an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. If the applicant has indicated that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

(3) If ~~((a voter registration))~~ an acknowledgement notice card is properly mailed as required by this section to the address listed by the ~~((applicant))~~ voter as being the ~~((applicant's))~~ voter's mailing address and the ~~((card))~~ notice is subsequently returned to the auditor by the postal service as being undeliverable to the ~~((applicant))~~ voter at that address, the auditor shall ~~((immediately cancel the voter registration of the applicant. The auditor shall))~~ promptly send the ~~((applicant))~~ voter a confirmation notice ~~((and explanation of the cancellation, and a registration application form. The postal service shall be requested to forward this notice as applicable)).~~ The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice.

NEW SECTION. Sec. 33. A new section is added to chapter 29.10 RCW to read as follows:

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

(1) "Verification notice" means a notice sent by the county auditor to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an

inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed so that the voter may update his or her current residence address.

NEW SECTION. **Sec. 34.** A new section is added to chapter 29.10 RCW to read as follows:

Registered voters are divided into two categories, "active" and "inactive." All registered voters are classified as active, unless assigned to inactive status by the county auditor.

Sec. 35. RCW 29.10.020 and 1991 c 81 s 23 are each amended to read as follows:

To maintain a valid voter registration, a registered voter who changes his or her residence from one address to another within the same county shall ~~((to maintain a valid voter registration,))~~ transfer his or her registration to the new address in one of the following ways: (1) Sending to the county auditor a signed request stating the voter's present address ~~((and precinct))~~ and the address ~~((and precinct))~~ from which the voter was last registered; (2) appearing in person before the auditor and signing such a request; (3) transferring the registration in the manner provided by RCW 29.10.170; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates.

The secretary of state ~~((shall))~~ may adopt rules facilitating the transfer of a registration by telephone authorized by this section. ~~((The rules shall include, but need not be limited to, those establishing the form which must be signed by a voter subsequent to transferring a registration by telephone.))~~

Sec. 36. RCW 29.10.040 and 1991 c 81 s 24 are each amended to read as follows:

~~((Except as provided in RCW 29.10.170,))~~ A registered voter who changes his or her residence from one county to another county, shall be required to register anew. Before registering anew, the voter shall sign an authorization to cancel his or her present registration. The authorization shall be on a form prescribed by the secretary of state by rule. The authorization shall be forwarded promptly to the county auditor of the county in which the voter was previously registered. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person.

Sec. 37. RCW 29.10.051 and 1991 c 81 s 25 are each amended to read as follows:

To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a ~~((deputy registrar))~~ registration assistant and signing such a change-of-name notice; ~~((or))~~ (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election; (4) by properly executing a name change on a mail-in registration application or a prescribed state agency application.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice.

The secretary of state may adopt rules facilitating the implementation of this section.

NEW SECTION. **Sec. 38.** A new section is added to chapter 29.10 RCW to read as follows:

(1) A county auditor shall assign a registered voter to inactive status and shall send the voter a confirmation notice if any of the following documents are returned by the postal service as undeliverable:

- (a) An acknowledgement of registration;
- (b) An acknowledgement of transfer to a new address;
- (c) A vote-by-mail ballot, absentee ballot, or application for a ballot;
- (d) Notification to a voter after precinct reassignment;
- (e) Notification to serve on jury duty; or
- (f) Any other document other than a confirmation notice, required by statute, to be mailed by the county auditor to the voter.

(2) A county auditor shall also assign a registered voter to inactive status and shall send the voter a confirmation notice:

(a) Whenever change of address information received from the department of licensing under RCW 29.07.270, or by any other agency designated to provide voter registration services under section 26 of this act, indicates that the voter has moved to an address outside the county; or

(b) If the auditor receives postal change of address information under RCW 29.10.180, indicating that the voter has moved out of the county.

NEW SECTION. **Sec. 39.** A new section is added to chapter 29.10 RCW to read as follows:

The county auditor shall return an inactive voter to active voter status if, during the period beginning on the date the voter was assigned to inactive status

and ending on the day of the second general election for federal office that occurs after the date that the voter was sent a confirmation notice, the voter: Notifies the auditor of a change of address within the county; responds to a confirmation notice with information that the voter continues to reside at the registration address; votes or attempts to vote in a primary or a special or general election and resides within the county; or signs any petition authorized by statute for which the signatures are required by law to be verified by the county auditor. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration.

NEW SECTION. Sec. 40. A new section is added to chapter 29.10 RCW to read as follows:

(1) Except as otherwise specified by this title, registered voters include those assigned to active and inactive status by the county auditor.

(2) Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, creating vote-by-mail precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. Election officials shall not include persons who are ongoing absentee voters under RCW 29.36.013 in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29.62.090.

Sec. 41. RCW 29.10.090 and 1983 c 110 s 1 are each amended to read as follows:

The local registrar of vital statistics in cities of the first class shall submit monthly to the county auditor a list of the names and addresses, if known, of all persons over eighteen years of age who have died.

The registrar of vital statistics of the state shall supply such monthly lists for each county of the state, exclusive of cities of the first class, to the county auditor thereof. The county auditors shall compare such lists with the registration records and cancel the registrations of deceased voters. The county auditor may also use newspaper obituary articles as a source of information in order to cancel a voter's registration. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the obituary in the cancellation records.

In addition to the above method of canceling registration records of deceased voters, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with ~~((any registration officer and the deputy registrar shall promptly forward such statement to))~~ the county auditor. Upon the receipt of such signed statement, the county auditor shall cancel the registration records concerned and so notify the secretary of

state. Upon receipt of such notice, the secretary of state shall in turn cancel his or her copy of said registration record.

The secretary of state as chief elections officer shall cause such form to be designed to carry out the provisions of this section. The county auditors shall have such forms available for public use. Further, each such public officer having jurisdiction of an election shall make available a reasonable supply of such forms for the use of the precinct election officers at each polling place on the day of an election.

NEW SECTION. Sec. 42. A new section is added to chapter 29.10 RCW to read as follows:

Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration.

Sec. 43. RCW 29.10.100 and 1971 ex.s. c 202 s 31 are each amended to read as follows:

On the Monday next following the ~~((transfer of))~~ cancellation of the registration of any voter or the change of name of a voter, each county auditor must certify to all ~~((transfers of))~~ cancellations or name changes made during the prior week to the secretary of state. The certificate shall set forth the name of each voter whose registration has been ~~((transferred or))~~ canceled or whose name was changed, and the county, city or town, and precinct in which ~~((he))~~ the voter was registered ~~((and, in case of a transfer, also the name of the county and city or town, the name or number of the precinct and the post office address (including street and number) to which the registration of the voter was transferred))~~.

Sec. 44. RCW 29.10.180 and 1993 c 434 s 10 and 1993 c 417 s 8 are each reenacted and amended to read as follows:

In addition to the case-by-case maintenance required under sections 38 and 39 of this act, the county auditor shall establish a general program of voter registration list maintenance. This program must be applied uniformly throughout the county and must be nondiscriminatory in its application. Any program established must be completed not later than ninety days before the date of a primary or general election for federal office. The county may fulfill its obligations under this section in one of the following ways:

(1) The county auditor may enter into one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor ~~((finds that information received under such a contract gives the appearance))~~ receives change of address information from the United States postal service that indicates that a voter has changed his or her residence address~~((, the auditor shall notify the voter concerning the requirements of state and federal laws governing voter registration and residence))~~ within the county, the auditor shall transfer the registration of that voter and send an acknowledgement notice of the transfer to the new

address. If the auditor receives postal change of address information indicating that the voter has moved out of the county, the auditor shall send a confirmation notice to the voter, send the voter a registration-by-mail form at the voter's new address, and advise the voter of the need to reregister in the new county. The auditor shall place the voter's registration on inactive status;

~~(2) (Whenever any vote by mail ballot, notification to voters following precincting of the county, notification to voters of selection to serve on jury duty, notification under subsection (1) of this section, or voter identification card other than a voter identification card issued under RCW 29.08.060 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.~~

~~(3) 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 ninety days from the date of mailing the notice of inquiry in a case resulting from a returned vote by mail ballot or forty five days from the date of mailing in all other cases or the individual's voter registration will be canceled.~~

~~(4) 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 ninetieth day or forty fifth day, as appropriate, after the date of mailing the inquiry.~~

~~(5) Upon the timely receipt of a response signed by the voter, the county auditor shall consider the inquiry satisfied and will make 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 ninety days after the date of mailing the notice in a case resulting from a returned vote by mail ballot, or, in all other cases, within forty five days after the date of mailing.~~

~~(6) The county auditor shall notify any voter whose registration has been canceled by 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 a satisfactory voter response, the auditor shall reinstate the voter.~~

~~(7) 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.))~~ A direct, nonforwardable, first-class, return if undeliverable, address correction requested, mailing to every registered voter within the county. If address correction information for a voter is received by the county auditor after this mailing, the auditor shall place that voter on inactive status and shall send to the voter a confirmation notice;

(3) Any other method approved by the secretary of state.

NEW SECTION. Sec. 45. A new section is added to chapter 29.10 RCW to read as follows:

Confirmation notices must be on a form prescribed by, or approved by, the secretary of state and must request that the voter confirm that he or she continues to reside at the address of record and desires to continue to use that address for voting purposes. The notice must inform the voter that if the voter does not respond to the notice and does not vote in either of the next two federal elections, his or her voter registration will be canceled.

NEW SECTION. Sec. 46. A new section is added to chapter 29.10 RCW to read as follows:

If the response to the confirmation notice provides the county auditor with the information indicating that the voter has moved within the county, the auditor shall transfer the voter's registration. If the response indicates that the voter has left the county, the auditor shall cancel the voter's registration.

NEW SECTION. Sec. 47. A new section is added to chapter 29.10 RCW to read as follows:

(1) A voter whose registration has been made inactive under this chapter and who offers to vote at an ensuing election before two federal elections have been held shall be allowed to vote a regular ballot and the voter's registration restored to active status.

(2) A voter whose registration has been properly canceled under this chapter shall vote a special ballot. The voter shall mark the special ballot in secrecy, the ballot shall be placed in a security envelope, the security envelope placed in a special ballot envelope, and the reasons for the use of the special ballot noted.

(3) Upon receipt of such a voted special 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 special 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 special ballot shall not be counted.

Sec. 48. RCW 29.36.120 and 1993 c 417 s 1 are each amended to read as follows:

At any primary or election, general or special, the county auditor may, in any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29.07.160, conduct the voting in that precinct by mail ballot. For any precinct having fewer than two hundred active registered voters where voting at a primary or a general election is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of that primary or general election, mail or deliver to each active and inactive registered voter within that precinct a notice that the voting in that precinct will be by mail ballot, an application form for a mail ballot, and a postage prepaid envelope, preaddressed to the issuing officer. A mail ballot shall be issued to each voter who returns a properly executed application to the county auditor no later than the day of that primary or general election. (~~Such application is valid~~) For all subsequent mail ballot elections in that precinct the application is valid so long as the voter remains active and qualified to vote. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29.36.013 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29.62.090.

At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

In no instance shall any special election be conducted by mail ballot in any precinct with two hundred or more active registered voters if candidates for partisan office are to be voted upon.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of such election, mail or deliver to each active registered voter a mail ballot and an envelope, preaddressed to the issuing officer. The auditor shall send each inactive voter either a ballot or an application to receive a ballot. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active.

Sec. 49. RCW 29.36.121 and 1993 c 417 s 2 are each amended to read as follows:

(1) At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the election be conducted by mail ballot. The county auditor may honor the request

or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

(2) In an odd-numbered year, the county auditor may conduct by mail ballot a primary or a special election concurrently with the primary:

(a) For any office or ballot measure of a special purpose district which is entirely within the county;

(b) For any office or ballot measure of a special purpose district which lies in the county and one or more other counties if the auditor first secures the concurrence of the county auditors of those other counties to conduct the primary in this manner district-wide; and

(c) For any ballot measure or nonpartisan office of a county, city, or town if the auditor first secures the concurrence of the legislative authority of the county, city, or town involved.

A primary in an odd-numbered year may not be conducted by mail ballot in any precinct with two hundred or more active registered voters if a partisan office or state office or state ballot measure is to be voted upon at that primary in the precinct.

(3) For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than fifteen days before the date of such election, mail or deliver to each registered voter a mail ballot and an envelope, preaddressed to the issuing officer. The county auditor shall notify an election jurisdiction for which a primary is to be held that the primary will be conducted by mail ballot.

(4) To the extent they are not inconsistent with subsections (1) through (3) of this section, the laws governing the conduct of mail ballot special elections apply to nonpartisan primaries conducted by mail ballot.

Sec. 50. RCW 29.36.122 and 1993 c 417 s 3 are each amended to read as follows:

For any special election conducted by mail, the county auditor shall send a mail ballot with a return identification envelope to each active registered voter of the district in which the special election is being conducted not sooner than the twenty-fifth day before the date of the election and not later than the fifteenth day before the date of the election. The envelope in which the ballot is mailed must clearly indicate that the ballot is not to be forwarded and is to be returned to the sender with return postage guaranteed. The auditor shall send an application to receive a ballot to all inactive voters of the district. Upon receipt of a completed application the auditor shall send a ballot and restore the voter's status to active.

Sec. 51. RCW 29.48.010 and 1990 c 59 s 35 are each amended to read as follows:

The county auditor shall provide in each polling place a sufficient number of voting booths or voting devices along with any supplies necessary to enable

the voter to mark or register his or her choices on the ballot and within which the voters may cast their votes in secrecy. Where paper ballots are used for voting, the number of voting booths shall be at least one for every fifty active registered voters in the precinct.

Sec. 52. RCW 46.20.205 and 1989 c 337 s 6 are each amended to read as follows:

Whenever any person after applying for or receiving a driver's license or identicard moves from the address named in the application or in the license or identicard issued to him or her or when the name of a licensee or holder of an identicard is changed by marriage or otherwise, the person shall within ten days thereafter notify the department in writing on a form provided by the department of his or her old and new addresses or of such former and new names and of the number of any license then held by him or her. The written notification is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard holder may be changed. The form must contain a place for the person to indicate that the address change is not for voting purposes. The department of licensing shall notify the secretary of state by the means described in RCW 29.07.270(3) of all change of address information received by means of this form except information on persons indicating that the change is not for voting purposes. Any notice regarding the cancellation, suspension, revocation, probation, or nonrenewal of the driver's license, driving privilege, or identicard mailed to the address of record of the licensee or identicard holder is effective notwithstanding the licensee's or identicard holder's failure to receive the notice.

NEW SECTION. Sec. 53. The following acts or parts of acts are each repealed:

- (1) RCW 29.07.015 and 1985 c 205 s 15;
- (2) RCW 29.07.020 and 1971 ex.s. c 202 s 5 & 1965 c 9 s 29.07.020;
- (3) RCW 29.07.050 and 1971 ex.s. c 202 s 7 & 1965 c 9 s 29.07.050;
- (4) RCW 29.07.060 and 1973 1st ex.s. c 21 s 1, 1971 ex.s. c 202 s 8, & 1965 c 9 s 29.07.060;
- (5) RCW 29.07.065 and 1986 c 167 s 4 & 1973 1st ex.s. c 21 s 2;
- (6) RCW 29.07.095 and 1973 1st ex.s. c 21 s 6, 1971 ex.s. c 202 s 12, & 1965 c 9 s 29.07.095;
- (7) RCW 29.07.105 and 1971 ex.s. c 202 s 14 & 1965 c 9 s 29.07.105; and
- (8) RCW 29.10.095 and 1971 ex.s. c 202 s 30 & 1965 c 9 s 29.10.095.

NEW SECTION. Sec. 54. RCW 29.10.080 and 1977 ex.s. c 361 s 27, 1971 ex.s. c 202 s 28, 1967 ex.s. c 109 s 3, & 1965 c 9 s 29.10.080 are each repealed.

NEW SECTION. Sec. 55. 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. 56.** Sections 1 through 3, 7, 10 through 12, 21, 22, 25, 27, 28, 31 through 34, 37 through 40, 42, 44 through 52, and 54 of this act take effect January 1, 1995.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 58

[Substitute Senate Bill 6195]

UNFAIR LABOR PRACTICES—PUBLIC EMPLOYMENT RELATIONS COMMISSION AUTHORITY

AN ACT Relating to the public employment relations commission; amending RCW 41.56.160; adding a new section to chapter 41.56 RCW; and repealing RCW 41.56.170, 41.56.180, and 41.56.190.

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

Sec. 1. RCW 41.56.160 and 1983 c 58 s 1 are each amended to read as follows:

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: **PROVIDED**, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW to read as follows:

Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules.

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

(1) RCW 41.56.170 and 1983 c 58 s 2, 1975 1st ex.s. c 296 s 25, & 1969 ex.s. c 215 s 4;

(2) RCW 41.56.180 and 1975 1st ex.s. c 296 s 26 & 1969 ex.s. c 215 s 5; and

(3) RCW 41.56.190 and 1975 1st ex.s. c 297 s 27 & 1969 ex.s. c 215 s 6.

Passed the Senate February 14, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 59

[Senate Bill 6202]

SEMITRAILER LENGTH

AN ACT Relating to the size and weight of motor vehicles; and amending RCW 46.44.0941 and 46.44.030.

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

Sec. 1. RCW 46.44.0941 and 1993 c 102 s 4 are each amended to read as follows:

The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

All overlegal loads, except overweight, single trip	\$ 10.00
Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days	\$ 20.00
Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days	\$ 10.00
Continuous operation of a combination of vehicles having one trailing unit that exceeds (forty-eight) <u>fifty-three</u> feet and is not more than fifty-six feet in length, for a period of one year	\$ 100.00
Continuous operation of a combination of vehicles having two trailing units which together exceed sixty-one feet and are not more than sixty-eight feet in length, for a period of one year	\$ 100.00
Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days	\$ 70.00

Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days	\$ 90.00
Continuous operation of overlegal loads having nonreducible features not to exceed eighty-five feet in length and fourteen feet in width, for a period of one year	\$ 150.00
Continuous operation of a two or three-axle collection truck, actually engaged in the collection of solid waste or recyclables, or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system	\$ 42.00 per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year \$ 25.00
- (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period \$ 25.00
- (4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year . . . \$ 100.00

Overweight Fee Schedule

Weight over total registered gross weight.	Fee per mile on state highways
1-5,999 pounds	\$.07
6,000-11,999 pounds	\$.14
12,000-17,999 pounds	\$.21

18,000-23,999 pounds	\$.35
24,000-29,999 pounds	\$.49
30,000-35,999 pounds	\$.63
36,000-41,999 pounds	\$.84
42,000-47,999 pounds	\$ 1.05
48,000-53,999 pounds	\$ 1.26
54,000-59,999 pounds	\$ 1.47
60,000-65,999 pounds	\$ 1.68
66,000-71,999 pounds	\$ 2.03
72,000-79,999 pounds	\$ 2.38
80,000 pounds or more	\$ 2.80

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government.

Sec. 2. RCW 46.44.030 and 1993 c 301 s 1 are each amended to read as follows:

It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus or school bus with an overall length not to exceed forty-six feet, or (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate on the highways of this state any combination of vehicles that contains a vehicle in excess of forty-eight feet, with or without load.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of ~~((forty-eight))~~ fifty-three feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer with an overall length, with or without load, in excess of seventy-five feet. However, a combination of vehicles transporting automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo.

Passed the Senate February 8, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 60

[Second Substitute Senate Bill 6276]

TRADEMARKS

AN ACT Relating to trademarks; amending RCW 19.77.030, 19.77.050, 19.77.060, 43.07.120, and 19.77.010; and adding new sections to chapter 19.77 RCW.

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

Sec. 1. RCW 19.77.030 and 1989 c 72 s 3 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 such goods or services anywhere and the date when it was first used with 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;

(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 or in such near resemblance thereto as 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; 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)~~), as set by rule by the secretary of state, payable to the secretary of state.

NEW SECTION. Sec. 2. A new section is added to chapter 19.77 RCW to read as follows:

The exclusive right to the use of a trademark may be reserved by:

- (1) A person intending to register a trademark under this title; or
- (2) A domestic or foreign corporation intending to change its trademark.

The reservation shall be made by filing with the secretary of state an application to reserve a specified trademark or service mark, executed by or on behalf of the applicant, one copy of the trademark artwork, and fees as set by rule by the secretary of state. If the secretary of state finds that the trademark is available for use, the secretary of state shall reserve the trademark for the exclusive use of the applicant for a period of one hundred eighty days. The reservation is limited to one filing.

Sec. 3. RCW 19.77.050 and 1989 c 72 s 5 are each amended to read as follows:

Registration of a trademark hereunder shall be effective for a term of (~~(ten)~~) six 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)~~) six years as to the goods or services for which the trademark is still in use in this state. A renewal fee (~~(of fifty dollars)~~) as set by rule by the secretary of state, 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.

Sec. 4. RCW 19.77.060 and 1982 c 35 s 183 are each amended to read as follows:

Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee ~~((of ten dollars))~~, as set by rule by the secretary of state, payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of five dollars, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for registration under this chapter shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

Sec. 5. RCW 43.07.120 and 1993 c 269 s 15 are each amended to read as follows:

(1) The secretary of state shall establish by rule and collect the fees in this subsection:

- (a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office;
- (b) For any certificate under seal;
- (c) For filing and recording trademark;
- (d) For each deed or patent of land issued by the governor;
- (e) For recording miscellaneous records, papers, or other documents.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title 23B RCW, chapter 18.100, 19.77, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW:

- (a) Any service rendered in-person at the secretary of state's office;
- (b) Any expedited service;

(c) The electronic or facsimile transmittal of information from corporation records or copies of documents;

(d) The providing of information by micrographic or other reduced-format compilation;

(e) The handling of checks, drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and

(f) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

Sec. 6. RCW 19.77.010 and 1989 c 72 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Alien" when used with reference to a person means a person who is not a citizen of the United States;

(2) "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))~~ (3) "Domestic" when used with reference to a person means a person who is a citizen of the United States;

(4) 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))~~ (5) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark;

~~((4))~~ (6) "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))~~ (7) "Person" means any individual, firm, partnership, corporation, association, union, or other organization;

~~((6))~~ (8) "Registered mark" means a trademark registered under this chapter;

~~((7))~~ (9) "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;

~~((8))~~ (10) "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 any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or 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;

~~((9))~~ (11) 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))~~ (12) "Trade name" shall have the same definition as under RCW 19.80.005(1);

~~((11))~~ (13) 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.

NEW SECTION. Sec. 7. A new section is added to chapter 19.77 RCW to read as follows:

Damages or equitable relief of any nature may not be awarded in any pending or future legal procedure in favor of an alien person against a domestic person on account of the domestic person's use of a trademark or trade name in this state that is employed by the alien person outside of the United States, absent proof that:

(1) The alien person had commenced to employ the trademark or trade name in connection with the sale of its goods or services within the United States prior to the time the domestic person commenced to use the trademark or trade name in this state; or

(2) That the trademark was registered by the United States patent and trademark office or reserved by the secretary of state to the alien person at the time the domestic person commenced to use it. This section applies regardless of the nature of the claim asserted and whether the claim upon which any such relief is sought arises by statute, under the common law, or otherwise.

Passed the Senate February 11, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 61

[Substitute Senate Bill 6282]

INDUSTRIAL SAFETY AND HEALTH APPEALS—REDETERMINATION PERIOD

AN ACT Relating to industrial safety and health appeals; and amending RCW 49.17.140.

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

Sec. 1. RCW 49.17.140 and 1986 c 20 s 1 are each amended to read as follows:

(1) If after an inspection or investigation the director or ~~((his))~~ the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that ~~((he))~~ the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that ~~((he))~~ the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that ~~((he))~~ the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that ~~((he))~~ the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that ~~((he))~~ the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon

which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days~~((, which))~~. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, ~~((he))~~ the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the ~~((thirty-day))~~ redetermination period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond ~~((his))~~ the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

Passed the Senate February 8, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 62

[Substitute Senate Bill 6305]

MINORS—EMPLOYMENT AS ACTORS OR PERFORMERS

AN ACT Relating to the employment of minors as actors or performers in film, video, or theatrical productions; amending RCW 26.28.060; and adding a new section to chapter 49.12 RCW. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.28.060 and 1973 1st ex.s. c 154 s 39 are each amended to read as follows:

(1) Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall permit to be employed, by another, any child under the age of fourteen years at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor.

(2) Subsection (1) of this section does not apply to children employed as actors or performers in film, video, audio, or theatrical productions.

NEW SECTION. **Sec. 2.** A new section is added to chapter 49.12 RCW to read as follows:

For all minors employed as actors or performers in film, video, audio, or theatrical productions, the department shall issue a permit under RCW 49.12.121 and a variance under RCW 49.12.105 upon finding that the terms of the employment sufficiently protect the minor's health, safety, and welfare. The findings shall be based on information provided to the department including, but not limited to, the minor's working conditions and planned work schedule, adult supervision of the minor, and any planned educational programs.

Passed the Senate February 14, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 63

[Senate Bill 6367]

BEER OR WINE SPECIAL OCCASION LICENSEES—PERMITTED ACTIVITIES

AN ACT Relating to activities of microbreweries; and amending RCW 66.28.010 and 66.28.070.

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

Sec. 1. RCW 66.28.010 and 1992 c 78 s 1 are each amended to read as follows:

(1) No manufacturer, importer, or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail

business, nor shall any manufacturer, importer, or wholesaler own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person, under any arrangement whatsoever, conduct his business upon property in which any manufacturer, importer, or wholesaler has any interest. Except as provided in subsection (3) of this section, no manufacturer, importer, or wholesaler shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth: PROVIDED, That "person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or wholesaler as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or wholesaler sell at retail any liquor as herein defined: PROVIDED, That nothing in this section shall prohibit a licensed brewer from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine wholesaler: PROVIDED FURTHER, That nothing in this section shall prohibit a licensed brewer or domestic winery, or a lessee of a licensed brewer or domestic winery, from being licensed as a class H restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a class H premises on the property on which the primary manufacturing facility of the licensed brewer or domestic winery is located or on contiguous property owned by the licensed brewer or domestic winery as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or wholesaler from providing services to a class G or J retail licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a class G or J retail licensee from receiving any such services as may be provided by a manufacturer, importer, or wholesaler: PROVIDED, That nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor wholesaler's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the wholesaler, (ii) is not employed by the wholesaler, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the wholesaler.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

Sec. 2. RCW 66.28.070 and 1987 c 205 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer licensee to purchase beer, except from a duly licensed beer wholesaler, and it shall be unlawful for any brewer or beer wholesaler to purchase beer, except from a duly licensed beer wholesaler or beer importer.

(2) A beer retailer licensee may purchase beer from a government agency which has lawfully seized beer from a licensed beer retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued business if the wholesaler has refused to accept beer from that retailer for return and refund. Beer purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding either a class G or J license may purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption or from a duly licensed beer or wine wholesaler.

Passed the Senate February 10, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 64

[Substitute Senate Bill 6487]

ESPRESSO COFFEE MACHINES

AN ACT Relating to boilers and unfired pressure vessels used in espresso coffee machines; amending RCW 70.79.080; adding a new section to chapter 70.79 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 small low-pressure boilers are found in devices such as espresso coffee machines and cleaning equipment common throughout Washington state. Such systems present little threat to public health and safety. Government regulation of such systems could impose a substantial burden on many small businesses and provide minimal public benefit. It is therefore the intent of the legislature to exempt these boilers from regulation under chapter 70.79 RCW and similar laws adopted by local governments.

Sec. 2. RCW 70.79.080 and 1986 c 97 s 1 are each amended to read as follows:

This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge when not located in place of public assembly;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ambient temperature;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of eighty pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American Society of Mechanical Engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Istituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro.

NEW SECTION. Sec. 3. A new section is added to chapter 70.79 RCW to read as follows:

A county, city, or other political subdivision of the state may not enforce any law specifically regulating the manufacture, installation, operation, maintenance, or inspection of any electric boiler exempt from this chapter by RCW 70.79.080(10).

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 65

[Engrossed Senate Bill 6564]

HOTEL-MOTEL TAX—COUNTIES OF FOUR HUNDRED THOUSAND OR MORE

AN ACT Relating to special excise taxes; and adding a new section to chapter 67.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 67.28 RCW to read as follows:

(1) The legislative body of any county with a population of four hundred thousand or more any portion of whose boundaries lie north of the northernmost boundary of King county is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging within the boundaries of the county by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same. Prior to authorizing a tax pursuant to this section, the county legislative body shall convene a public meeting to consult with the mayor of every city and town located within the boundaries of the county regarding the proposed use of tax revenues.

(2) Any seller, as defined in RCW 82.08.010, who is required to collect a tax under this section shall pay over such tax to the county, as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(3) The taxes levied and collected under this section shall be credited to a special fund in the treasury of the county imposing such tax. Such taxes may be levied and collected for any of the purposes described in RCW 67.28.120, including an arena, under a joint use agreement or otherwise as permitted by RCW 67.28.120 or 67.28.130 or to pay or secure the payment of general obligation bonds or revenue bonds issued for such purposes or to develop strategies to expand tourism within the county. On at least an annual basis, the county legislative authority shall consult with the mayor of every city and town located within the boundaries of the county regarding the use of taxes collected pursuant to this section.

(4) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

Passed the Senate February 15, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 66

[Senate Bill 6573]

MANUFACTURERS—TAX STRUCTURE STUDY

AN ACT Relating to the impact of taxes on manufacturing; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Washington's tax structure as it applies to manufacturers is often cited as a deterrent to economic development;

(b) The retail sales tax applies to labor and materials used to construct new manufacturing facilities and to renovate existing facilities. The tax also applies to new and replacement manufacturing equipment and machinery. Because of the broad tax base and because of the high tax rate, the retail sales tax may inhibit the development of new manufacturing businesses and expansion of existing businesses, especially those in capital intensive industries; and

(c) The business and occupation tax applies to gross receipts from engaging in business regardless of whether the business is profitable. The tax may be more beneficial to established manufacturers, since it tends to favor high-profit businesses. However, the tax may impose a heavy burden on new manufacturers that may not have reached their maximum level of operating efficiency, have yet to fully develop their markets, and as a result are unprofitable.

(2) The intent of this act is to require a study to:

(a) Analyze how the current tax structure affects manufacturers;

(b) Consider alternative methods of taxing manufacturing investment;

(c) Identify the effects of tax incentives for manufacturers; and

(d) Recommend to the legislature sales and use tax changes that might result in more equitable taxation of manufacturers while preserving a stable source of revenue for funding public services in the future.

NEW SECTION. Sec. 2. (1) The department of revenue shall conduct a study of the current state tax structure as it applies to manufacturers. The study shall address but is not limited to the following:

(a) What taxes currently apply to manufacturers? What tax incentives are available to manufacturers?

(b) How do taxes affect a manufacturer over the various stages of its business cycle? How does the tax treat new manufacturers as compared with established manufacturers?

(c) How much does the retail sales tax on construction and acquisition of machinery and equipment add to the cost of capital?

(d) How are manufacturers taxed in other states? What tax incentives are available to the manufacturing industry in other states? Does Washington's tax structure place manufacturers at a competitive disadvantage compared with manufacturers in other states?

(e) Do tax incentives for manufacturers stimulate economic development? Do tax incentives help overcome disparate treatment between new and established manufacturers? Do tax incentives have an effect in eliminating a competitive disadvantage suffered by in-state as opposed to out-of-state manufacturers?

(2) To perform this study, the department shall form an advisory study committee with balanced representation from different segments of government and the manufacturing industries. The advisory committee shall include, but need not be limited to, two members from the house of representatives, two members from the senate, and representatives of both small and large manufacturing businesses. The advisory committee may also include representatives of local government, and tax policy experts from the academic, legal, and business communities.

(3) The department of revenue shall provide staff for the purpose of the study.

(4) The department of revenue shall present a final report of the findings of the study to the committees of the legislature that deal with revenue matters no later than December 31, 1994.

Passed the Senate February 11, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 67

[Senate Bill 6582]

APPLE GRADES AND STANDARDS

AN ACT Relating to grades and standards for agricultural products; and amending RCW 15.17.100 and 15.17.210.

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

Sec. 1. RCW 15.17.100 and 1990 c 19 s 1 are each amended to read as follows:

The director shall by rule establish either grades ~~((and/or))~~ or classifications, or both, for apples and standards and sizes for ~~((such))~~ either grades ~~((and/or))~~ or classifications, or both. In establishing ~~((such))~~ the standards for either grades ~~((and/or))~~ or classifications, or both, the director shall take into account the factors of maturity, soundness, color, shape, and freedom from mechanical and plant pest injury. The grades and standards shall be applied to and used only upon those containers of apples that are packed within the state of Washington. When establishing standards of color requirements for red varieties and partial red varieties of apples, the director shall establish color standards for ~~((such))~~ the varieties ~~((which))~~ that are not less than the following:

- | | |
|-------------------------|-----------------|
| 1. Arkansas Black | Fifteen percent |
| 2. Spitzenburg (Esopus) | Fifteen percent |
| 3. Winesap | Twenty percent |
| 4. King David | Fifteen percent |
| 5. Delicious | Twenty percent |
| 6. Stayman Winesap | Ten percent |
| 7. Vanderpool | Ten percent |
| 8. Black Twig | Ten percent |
| 9. Jonathan | Ten percent |
| 10. McIntosh | Ten percent |
| 11. Rome | Ten percent |
| 12. Red Sport varieties | Twenty percent |

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties.

The director may upon his or her own motion or upon the recommendation of an organization such as the Washington state horticultural association's grade and pack committee hold hearings in each major apple producing area concerning changes in either apple grades ~~((and/or))~~ or standards, or both for ~~((such))~~ the apple grades as proposed by the director or as recommended by ~~((such))~~ the organization.

The hearings on ~~((such))~~ the recommendations for changes in either grades for apples ~~((and/or))~~ or standards, or both, for ~~((such))~~ the grades ~~((shall be))~~ is subject to chapter 34.05 RCW concerning the adoption of rules.

The director, in making a final determination on his or her recommendation or those proposed by ~~((such))~~ the organization, shall give due consideration to testimony given by producers or producer organizations at ~~((such))~~ the hearing.

It ~~((shall be))~~ is unlawful for ~~((any))~~ a person to sell, offer for sale, hold for sale, ship, or transport ~~((any))~~ apples unless they comply with the provisions of this chapter and the rules adopted hereunder.

Sec. 2. RCW 15.17.210 and 1963 c 122 s 21 are each amended to read as follows:

It ~~((shall be))~~ is unlawful to sell, offer for sale, hold for sale, ship, or transport any horticultural plants or products:

(1) Subject to the requirements of RCW 15.17.040 unless they meet ~~((such))~~ the requirements;

(2) As meeting either the grades ~~((and/or))~~ or classifications, or both, and standards and sizes for ~~((such))~~ the grades ~~((and/or))~~ or classifications as adopted or amended by the director under RCW 15.17.050 unless they meet ~~((such))~~ the standards and sizes for ~~((such))~~ either grades ~~((and/or))~~ or classifications, or both;

(3) As meeting the standards and sizes for private grades or brands as approved by the director under RCW 15.17.090 unless they meet ~~((such))~~ the standards and sizes;

(4) In containers other than the size and dimensions prescribed by the director, when he or she has prescribed by rule ~~((such))~~ the size and dimensions for containers in which any horticultural plants or products will be placed or packed ~~((: PROVIDED, That))~~. However, this subsection shall not apply when any such horticultural plants or products are being shipped or transported to a packing plant, processing plant, or cold storage facility for preparation for market;

(5) Unless the containers in which ~~((such))~~ the horticultural plants or products are placed or packed are marked as prescribed by the director, with either the proper United States ~~((and/or))~~ or Washington grade ~~((and/or))~~ or classification, or both, or private grades or brands of ~~((such))~~ the horticultural plants or products;

(6) Unless the containers in which ~~((such))~~ the horticultural plants or products are placed or packed are marked as prescribed by the director, which may include the following:

(a) The name and address of the grower, or packer, or distributor;

(b) The varieties of ~~((such))~~ the horticultural plants or products;

(c) The size, weight, and either volume ~~((and/or))~~ or count, or both, of ~~((such))~~ the horticultural plants or products;

(7) Which are in containers marked or advertised for sale or sold as being either graded ~~((and/or))~~ or classified, or both, according to the standards and sizes prescribed by the director or by law unless ~~((such))~~ the horticultural plants or products conform with ~~((such))~~ either grades ~~((and/or))~~ or classifications, or both, and their standards and sizes;

(8) Which are deceptively packed;

- (9) Which are deceptively arranged or displayed;
- (10) Which are mislabeled;
- (11) Which are in containers marked with a Washington state grade designation for apples, unless the containers of apples were packed in the state of Washington;
- (12) Which do not conform to the provisions of this chapter or rules adopted hereunder.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 68

[Senate Bill 6604]

INCAPACITATED PUBLIC ASSISTANCE RECIPIENTS—GUARDIANSHIP FEES AND COMPENSATION

AN ACT Relating to certain public assistance recipients who are incapacitated persons; amending RCW 11.92.180; and adding a new section to chapter 43.20B RCW.

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

Sec. 1. RCW 11.92.180 and 1991 c 289 s 12 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of

residential or supportive services then the amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule, and shall not include compensation for services provided or funded by the department or a department contractor that the incapacitated person is eligible to receive.

NEW SECTION. Sec. 2. A new section is added to chapter 43.20B RCW to read as follows:

The department of social and health services shall establish by rule the maximum amount of guardianship fees and additional compensation for administrative costs that may be allowed by the court as compensation for a guardian or limited guardian of an incapacitated person who is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services.

Passed the Senate March 1, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 69

[Engrossed Substitute House Bill 1182]

SUBSTITUTE TEACHERS—PENSIONS

AN ACT Relating to pension payments to retired teachers; amending RCW 41.32.570; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments.

Sec. 2. RCW 41.32.570 and 1989 c 273 s 29 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) In addition to the seventy-five days of service permitted under subsection (1) of this section, a retired teacher may also serve only as a substitute teacher for up to an additional fifteen days per school year without reduction of pension if:

(a) A school district, which is not a member of a multidistrict substitute cooperative, determines that it has exhausted or can reasonably anticipate that it will exhaust its list of qualified and available substitutes and the school board of the district adopts a resolution to make its substitute teachers who are retired teachers eligible for the additional fifteen days of extended service once the list of qualified and available substitutes has been exhausted. The resolution by the school district shall state that the services of retired teachers are necessary to address the shortage of qualified and available substitutes. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with a list of retired teachers who have been employed as substitute teachers to the department and may notify the retired teachers included on the list of their right to take advantage of the provisions of this subsection; or

(b) A multidistrict substitute cooperative determines that the school districts have exhausted or can reasonably anticipate that they will exhaust their list of qualified and available substitutes and each of the school boards adopts a resolution to make their substitute teachers who are retired teachers eligible for the extended service once the list of qualified and available substitutes has been exhausted. The resolutions by each of the school districts shall state that the services of retired teachers are necessary to address the shortage of qualified and available substitutes. The resolutions shall be valid only for the school year in which they are adopted. The cooperative shall forward a copy of the resolutions with a list of retired teachers who have been employed as substitute teachers to the department and may notify the retired teachers included on the list of their right to take advantage of the provisions of this subsection.

(3) Subsection (1) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall apply only to benefits payable after June 11, 1986.

(4) Subsection (2) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall only apply to benefits payable after September 1, 1994.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 70

[Substitute House Bill 2452]

WINE SHIPMENTS

AN ACT Relating to shipments of wine; amending RCW 66.12.210; and prescribing penalties.
Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.12.210 and 1991 c 149 s 3 are each amended to read as follows:

~~((Pickup, delivery, or))~~ Acceptance of any container of wine, by a person, that is shipped into this state to a person from a person who is not licensed as provided in RCW 66.12.190, shall constitute a civil violation and be subject to the penalties imposed by chapter 66.44 RCW.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 71

[Substitute House Bill 1955]

LOCAL IMPROVEMENT DISTRICTS AND COUNTY ROAD IMPROVEMENT DISTRICTS—HEARINGS

AN ACT Relating to hearings related to improvement districts; amending RCW 35.44.070 and 35.43.140; and adding new sections to chapter 36.88 RCW.

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

Sec. 1. RCW 35.44.070 and 1979 ex.s. c 100 s 1 are each amended to read as follows:

The assessment roll for local improvements when prepared as provided by law shall be filed with the city or town clerk. The council or other legislative authority shall thereupon fix a date for a hearing thereon before such legislative authority or may direct that the hearing shall be held before a committee thereof or the legislative authority of any city ~~((having a population of 15,000 or more))~~ or town may designate an officer to conduct such hearings. The committee ~~((of four))~~ or officer designated shall hold a hearing on the assessment roll and consider all objections filed following which the committee or officer shall make recommendations to such legislative authority which shall either adopt or reject the recommendations of the committee or officer. If a hearing is held before such a committee or officer it shall not be necessary to hold a hearing on the assessment roll before such legislative authority ~~((+PROVIDED, That))~~. A local ordinance shall provide for an appeal by any person protesting his or her assessment to the legislative authority of a decision made by such officer. The same procedure may if so directed by such legislative authority be followed with respect to any assessment upon the roll which is raised or changed to include omitted property. Such legislative authority shall direct the clerk to give notice of the hearing and of the time and place thereof.

Sec. 2. RCW 35.43.140 and 1989 c 243 s 2 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)~~) or town 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.

NEW SECTION. Sec. 3. A new section is added to chapter 36.88 RCW to read as follows:

In lieu of the county legislative authority holding the hearing under RCW 36.88.060 to create the road improvement district, the county legislative authority may adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the full county legislative authority for final action, which need not hold a hearing on the proposed assessment role and shall either adopt or reject the recommendations.

NEW SECTION. Sec. 4. A new section is added to chapter 36.88 RCW to read as follows:

In lieu of the county legislative authority holding the hearing on assessment roll under RCW 36.88.090 as the board of equalization, the county legislative authority may adopt an ordinance providing for a committee of the county

legislative authority or an officer to conduct the hearing on the assessment roll as the board of equalization.

A committee or an officer that sits as a board of adjustment shall conduct a hearing on the proposed assessment roll and shall make recommendations to the full county legislative authority, which need not hold a hearing on the proposed assessment roll and shall either adopt or reject the recommendations. The ordinance shall provide for an appeal procedure by which a property owner may protest his or her assessment that is proposed by the committee or officer to the full county legislative authority and the full county legislative authority may reject or accept any appealed protested assessment and if accepted shall modify the assessment roll accordingly.

Passed the House January 28, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 72

[Substitute House Bill 2151]

HIV TEST RESULTS DISCLOSURE—SEX OFFENSE VICTIMS

AN ACT Relating to disclosure of HIV test results to victims of sex offenses; and amending RCW 70.24.105.

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

Sec. 1. RCW 70.24.105 and 1989 c 123 s 1 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 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 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;

(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.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing.

Passed the House February 9, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 73

[Substitute House Bill 2178]

FIRE FIGHTERS—CIVIL SERVICE SYSTEM TRANSFER RIGHTS

AN ACT Relating to the clarification of employee transfer rights for fire fighters; amending RCW 35.10.365, 35.10.520, 35.13.225, 52.04.121, and 52.06.120; and declaring an emergency.

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

Sec. 1. RCW 35.10.365 and 1986 c 254 s 5 are each amended to read as follows:

(1) An eligible employee may transfer into the civil service system of the annexing city, code city₁ or town by filing a written request with the city, code city₁ or town civil service commission. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period (~~as completed~~), (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city₂ or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the annexed city, code city₁ or town fire department from the beginning of his or her employment with the former city or code city

fire department: PROVIDED, That for purposes of layoffs by the annexing city or code city, only the time of service accrued with the annexing city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission which shall be credited to such employee as a part of the period of employment in the annexed city, code city, or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the annexing city, code city, or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

Sec. 2. RCW 35.10.520 and 1986 c 254 s 2 are each amended to read as follows:

(1) An eligible employee may transfer into the civil service system of the consolidated city or code city by filing a written request with the civil service commission of the consolidated city. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period (~~as completed~~), (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city or code city civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the consolidated city fire department from the beginning of his or her employment with the former city or code city fire department: PROVIDED, That for purposes of layoffs by the consolidated city or code city,

only the time of service accrued with the consolidated city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated agencies and the consolidating and consolidated fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission and shall be credited to such employee as a part of the period of employment in the consolidated city fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the consolidated city or code city fire department as the department determines are needed to provide services. These needed employees shall be taken in order of greatest seniority from any of the seniority lists of the consolidating city or code city and the remaining employees who transfer as provided in this section and RCW 35.10.510 and 35.10.530 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated fire agency and the consolidating and consolidated fire agencies.

(3) The consolidated city or code city shall retain the right to select the fire chief and assistant fire chiefs regardless of seniority.

Sec. 3. RCW 35.13.225 and 1986 c 254 s 8 are each amended to read as follows:

(1) An eligible employee may transfer into the civil service system of the city, code city, or town fire department by filing a written request with the city, code city, or town civil service commission and by giving written notice thereof to the board of commissioners of the fire protection district. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the city, code city, or town fire department in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period (~~as completed~~), (c) receive a salary at least equal to that of other new employees of the city, code city, or town fire department in the position filled, and (d) in

all other matters, such as retirement, sick leave, and vacation, have, within the city, code city₂ or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the city, code city₂ or town fire department from the beginning of employment with the fire protection district: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The board of commissioners of the fire protection district shall, upon receipt of such notice, transmit to any applicable civil service commission a record of the employee's service with the fire protection district which shall be credited to such employee as a part of the period of employment in the city, code city₂ or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the city, code city₂ or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.13.215 and 35.13.235 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city₂ or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city₂ or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

Sec. 4. RCW 52.04.121 and 1986 c 254 s 11 are each amended to read as follows:

(1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city₂ or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after

completion of the probationary period (~~(as completed)~~), (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, or town fire department: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city, or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

Sec. 5. RCW 52.06.120 and 1986 c 254 s 14 are each amended to read as follows:

(1) An eligible employee may transfer into the merger district by filing a written request with the board of fire commissioners of the merger district and by giving written notice to the board of fire commissioners of the merging district. Upon receipt of such request by the board of the merger district the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the merger district in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period (~~(as completed)~~), (c) receive a salary at least equal to that of other new employees

of the merger district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have, all the rights, benefits, and privileges to which he or she would have been entitled to as an employee of the merger district from the beginning of employment with the merging district: PROVIDED, That for purposes of layoffs by the merger fire agency, only the time of service accrued with the merger agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the merging and merger fire agencies and the merging and merger fire agencies. The board of the merging district shall, upon receipt of such notice, transmit to the board of the merger district a record of the employee's service with the merging district which shall be credited to such employee as a part of the period of employment in the merger district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the merger district as the merger district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.06.110 and 52.06.130 shall head the list for employment in order of their seniority, to the end that they shall be the first to be reemployed in the merger district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the merging and merged fire agencies and the merging and merged fire agencies.

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 9, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 74

[Substitute House Bill 2182]

PORT DISTRICT FIRE FIGHTERS—EMPLOYMENT TRANSFER

AN ACT Relating to port district fire fighters; adding a new section to chapter 53.08 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 it passed comprehensive legislation in 1986 to provide protection to fire fighters who risk losing their jobs as a result of an annexation, incorporation, merger, or consolidation by a city, town, or fire protection district. The legislation did not, however, grant these same protections to fire fighters who are employed by port districts. It is the intent of the legislature that fire fighters who are employed by port districts should have the same transfer rights as other local government fire fighters in the event of an annexation, consolidation, merger, or incorporation by a city, town, or fire protection district.

NEW SECTION. Sec. 2. A new section is added to chapter 53.08 RCW to read as follows:

(1) When a port district provides its own fire protection services with port district employees, and port district property is included as part of an annexation, incorporation, consolidation, or merger by a city, town, or fire protection district, and fire protection services for this port district property will be furnished by the city, town, or fire protection district, an eligible employee may transfer employment to the city, town, or fire protection district in the same manner and under the same conditions that a fire fighter may transfer employment into a fire protection district pursuant to RCW 52.04.111, 52.04.121, and 52.04.131.

(2) "Eligible employee" means an employee of the port district who (a) was at the time of the annexation, merger, consolidation, or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the city, town, or fire protection district, (b) will, as a direct consequence of the annexation, merger, consolidation, or incorporation, be separated from the employ of the port district, and (c) can perform the duties and meet the minimum requirements of the position to be filled.

Passed the House February 8, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 75

[House Bill 2188]

PUBLIC PORTS—INTERNATIONAL TRADE

AN ACT Relating to international trade through Washington ports; amending RCW 53.06.020 and 53.06.070; and repealing RCW 53.31.910 and 53.31.911.

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

Sec. 1. RCW 53.06.020 and 1989 c 425 s 3 are each amended to read as follows:

It shall be the duty of the port district commissions in the state to take such action to effect the coordination of the administrative programs and operations

of each port district in the state and to submit to the governor and the legislature biennially a joint report or joint reports containing the recommendations for procedural changes which would increase the efficiency of the respective port districts. ~~((Beginning with the 1990 legislative session, the association shall report on steps being taken to establish a federation of Washington ports pursuant to RCW 53.06.070.))~~

Sec. 2. RCW 53.06.070 and 1989 c 425 s 2 are each amended to read as follows:

The Washington public ports association is authorized to create a federation of Washington ports to enable member ports to strengthen their international trading capabilities and market the region's products worldwide. Such a federation shall maintain the authority of individual ports and have the following purposes:

- (1) To operate as an export trading company under the provisions enumerated in chapter 53.31 RCW;
- (2) To provide a network to market the services of the members of the Washington public ports association;
- (3) To provide expertise and assistance to businesses interested in export markets;
- (4) To promote cooperative efforts between ports and local associate development organizations to assist local economic development efforts and build local capacity; and
- (5) To assist in the efficient marketing of the state's trade, tourism, and travel resources.

~~((This section shall expire July 1, 1994, and shall be subject to review under chapter 43.131 RCW.))~~

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

- (1) RCW 53.31.910 and 1990 c 297 s 22; and
- (2) RCW 53.31.911 and 1991 c 363 s 162 & 1990 c 297 s 23.

Passed the House February 7, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 76

[Engrossed House Bill 2193]

RENAL DISEASE FACILITY DIALYSIS EMPLOYEES

AN ACT Relating to renal disease facility health care assistants; and amending RCW 18.135.020.

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

Sec. 1. RCW 18.135.020 and 1991 c 3 s 272 are each amended to read as follows:

As used in this chapter:

(1) "Secretary" means the secretary of health.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter. However persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis are exempt from certification under this chapter.

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW;

or

(c) Acting within the scope of their respective licensures, a podiatrist licensed under chapter 18.22 RCW or a registered nurse licensed under chapter 18.88 RCW.

(4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections, as defined in this chapter, but need not be present during procedures to withdraw blood.

(5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee.

Passed the House February 4, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 77

[Substitute House Bill 2197]

SEX OFFENDER RELEASE NOTIFICATION

AN ACT Relating to the department of corrections; and reenacting and amending RCW 9.94A.155.

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

Sec. 1. RCW 9.94A.155 and 1992 c 186 s 7 and 1992 c 45 s 2 are each reenacted and 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, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9A.46.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(c) 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. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, 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 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.

(4) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) 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.

(6) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(7) 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.

~~((7))~~ (8) 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.

Passed the House February 10, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 78

[Engrossed Substitute House Bill 2198]

JUVENILE SEX OFFENDERS—SCHOOL ATTENDANCE RESTRICTIONS

AN ACT Relating to juvenile sex offenders; and amending RCW 13.40.215.

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

Sec. 1. RCW 13.40.215 and 1993 c 27 s 1 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense, a sex offense, or stalking, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside; and

(ii) The sheriff of the county in which the juvenile will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(2)(a) If a juvenile found to have committed a violent offense, a sex offense, or stalking escapes from a facility of the department, the secretary 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 juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary 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.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent offense, a sex offense, or stalking, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) Upon discharge, parole, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public elementary, middle, or high school that is attended by a victim of the sex offender. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for transportation or other costs associated with or required by the sex offender's change in school that otherwise would be paid by a school district. Upon discharge, parole, or other authorized leave or release of a convicted juvenile sex offender, the secretary shall send written notice of the discharge, parole, or other authorized leave or release and the requirements of this subsection to the common school district board of directors of the district in which the sex offender intends to reside or the district in which the sex offender last attended school, whichever is appropriate.

(6) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Stalking" means the crime of stalking as defined in RCW 9A.46.110;
- (d) "Next of kin" means a person's spouse, parents, siblings, and children.

Passed the House February 14, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 79

[House Bill 2205]

URBAN EMERGENCY MEDICAL SERVICE DISTRICTS

AN ACT Relating to urban emergency medical service districts; amending RCW 84.52.069; and adding a new section to chapter 35.21 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.21 RCW to read as follows:

The council of a city or town that has territory included in two counties may adopt an ordinance creating an urban emergency medical service district in all of the portion of the city or town that is located in one of the two counties if: (1) The county in which the urban emergency medical service district is located does not impose an emergency medical service levy authorized under RCW 84.52.069; and (2) the other county in which the city or town is located does

impose an emergency medical service levy authorized under RCW 84.52.069. The ordinance creating the district may only be adopted after a public hearing has been held on the creation of the district and the council makes a finding that it is in the public interest to create the district. The members of the city or town council, acting in an ex officio capacity and independently, shall compose the governing body of the urban emergency medical service district. The voters of an urban emergency medical service district shall be all registered voters residing within the urban emergency medical service district.

An urban emergency medical service district shall be a quasi-municipal corporation and an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution. Urban emergency medical service districts shall also be "taxing districts" within the meaning of Article VII, section 2 of the state Constitution.

An urban emergency medical service district shall have the authority to contract under chapter 39.34 RCW with a county, city, town, fire protection district, public hospital district, or emergency medical service district to have emergency medical services provided within its boundaries.

Territory located in the same county as an urban emergency medical service district that is annexed by the city or town must automatically be annexed to the urban emergency medical service district.

Sec. 2. RCW 84.52.069 and 1993 c 337 s 5 are each amended to read as follows:

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty ~~((per centum))~~ percent of the total ~~((votes cast))~~ number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty ~~((per centum))~~ percent of the total ~~((votes cast))~~ number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty ~~((per centum))~~ percent of the total ~~((votes cast))~~ number of voters voting in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related

personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is authorized subsequent to a county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The tax levy authorized in this section is in addition to the tax levy authorized in RCW 84.52.043.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

Passed the House February 12, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 80

[Substitute House Bill 2239]

PRISON CONSTRUCTION—PUBLIC WORKS CONTRACTS

AN ACT Relating to innovative prison construction; amending RCW 39.04.210, 39.04.220, and 39.04.230; and declaring an emergency.

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

Sec. 1. RCW 39.04.210 and 1991 c 130 s 1 are each amended to read as follows:

The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance of and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and that effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there ~~((exists an urgent))~~ will continue to exist a need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the ((present size and)) predicted growth of offender populations and that it is necessary to provide public works contract options for the effective construction and repair of additional department of corrections facilities. ~~((The legislature further finds that both the need and the urgency to construct additional state correctional facilities requires the temporary use of more expedient methods for awarding state construction contracts for correctional facilities.))~~

Sec. 2. RCW 39.04.220 and 1991 c 130 s 2 are each amended to read as follows:

(1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars ~~((appropriated and))~~ authorized by the legislature for the department of corrections ~~((in the 1989-91 biennium at the McNeil Island corrections center, the Clallam Bay corrections center, the construction of new correctional facilities under the authority of the secretary of corrections including drug camps, work camps, a new medium security prison and such other correctional))~~ to construct or repair facilities ((as may be authorized by the legislature during the biennium ending June 30, 1993,)) may be accomplished under contract using the general contractor/construction manager method described in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The department of general administration shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under

subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to ~~((contracts signed))~~ projects authorized on or before July 1, ((+1996)) 1997.

~~((2))~~ (3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of general administration is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of general administration and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the

department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific ~~((goals))~~ contract requirements for women and minority enterprise~~((s))~~ participation shall be specified in each subcontract bid package that ~~((responsive bidders will have to meet or))~~ exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over ~~((one))~~ two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. ~~((The))~~ Bidding ~~((of))~~ on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited ~~((but it))~~. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid ~~((if authorized by the director of general administration in the event no bids are received, the bids received are over the budget amount, or the subcontractor fails to perform))~~.

~~((3))~~ (4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

~~((4))~~ (5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of the department of general administration. However, all actions taken pursuant to the powers and authority granted to the director or the department of general administration under this section may only be taken with the concurrence of the department of corrections.

Sec. 3. RCW 39.04.230 and 1991 c 130 s 3 are each amended to read as follows:

Methods of public works contracting authorized by RCW 39.04.210 and 39.04.220 shall remain in full force and effect until completion of ~~((contracts signed on or before June 30, 1996))~~ projects authorized on or before July 1, 1997.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

Passed the House February 10, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 81

[House Bill 2244]

CITIES AND TOWNS—CLASSIFICATION REVISIONS

AN ACT Relating to classifications of cities and towns; amending RCW 3.38.010, 29.07.105, 35.01.010, 35.01.020, 35.01.040, 35.02.005, 35.06.010, 35.06.070, 35.06.080, 35.07.010, 35.13.180, 35.13.190, 35.13.200, 35.13.210, 35.13.280, 35.23.170, 35.23.270, 35.23.352, 35.23.440, 35.23.455, 35.23.460, 35.23.470, 35.23.570, 35.23.020, 35.23.040, 35.23.080, 35.23.120, 35.23.150, 35.23.160, 35.23.180, 35.23.190, 35.23.250, 35.23.280, 35.23.530, 35.24.020, 35.24.050, 35.24.080, 35.24.100, 35.24.142, 35.24.160, 35.24.190, 35.24.200, 35.24.210, 35.24.305, 35.24.306, 35.24.330, 35.24.370, 35.24.400, 35.24.410, 35.24.420, 35.24.440, 35.24.455, 35.27.010, 35.27.550, 35.31.050, 35.34.040, 35.55.010, 35.55.130, 35.56.010, 35.61.010, 35.69.010, 35.70.020, 35.70.100, 35.86A.020, 35.86A.050, 35A.01.070, 35A.02.130, 35A.06.020, 35A.06.030, 35A.10.010, 35A.12.010, 35A.13.010, 35A.29.150, 36.94.050, 39.36.040, 41.44.050, 42.23.030, 54.16.180, 56.04.090, 57.04.100, 57.08.010, 68.52.210, 81.48.030, 81.48.040, 84.52.020, 84.52.070, 90.28.010, and 90.28.020; adding new sections to chapter 35.23 RCW; recodifying RCW 35.24.020, 35.24.050, 35.24.070, 35.24.080, 35.24.090, 35.24.100, 35.24.110, 35.24.120, 35.24.130, 35.24.140, 35.24.142, 35.24.144, 35.24.146, 35.24.148, 35.24.160, 35.24.180, 35.24.190, 35.24.200, 35.24.210, 35.24.220, 35.24.250, 35.24.260, 35.24.300, 35.24.305, 35.24.306, 35.24.310, 35.24.330, 35.24.370, 35.24.400, 35.24.410, 35.24.420, 35.24.430, 35.24.440, 35.24.455, 35.23.020, 35.23.040, 35.23.080, 35.23.120, 35.23.150, 35.23.160, 35.23.180, 35.23.190, 35.23.250, 35.23.280, and 35.23.530; repealing RCW 35.01.030, 35.06.020, 35.06.030, 35.06.040, 35.06.050, 35.06.060, 35.23.030, 35.23.050, 35.23.070, 35.23.090, 35.23.100, 35.23.110, 35.23.130, 35.23.132, 35.23.140, 35.23.200, 35.23.210, 35.23.220, 35.23.230, 35.23.240, 35.23.260, 35.23.300, 35.23.310, 35.23.320, 35.23.370, 35.23.450, 35.23.500, 35.23.510, 35.23.540, 35.23.550, 35.23.595, 35.24.010, 35.24.030, 35.24.060, 35.24.274, 35.24.275, 35.24.290, 35.24.340, 35.24.350, 35.24.380, 35.24.390, 35.61.320, 35.61.330, and 35.61.340; and providing an effective date.

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

Sec. 1. RCW 3.38.010 and 1984 c 258 s 22 are each amended to read as follows:

There is established in each county a district court districting committee composed of the following:

- (1) The judge of the superior court, or, if there be more than one such judge, then one of the judges selected by that court;
- (2) The prosecuting attorney, or a deputy selected by the prosecuting attorney;

(3) A practicing lawyer of the county selected by the president of the largest local bar association, if there be one, and if not, then by the county legislative authority;

(4) A judge of a court of limited jurisdiction in the county selected by the president of the Washington state magistrates' association; and

(5) The mayor, or representative appointed by the mayor, of each ~~((first, second, and third class))~~ city ~~((of))~~ or town with a population of three thousand or more in the county;

(6) One person to represent the ~~((fourth class))~~ cities ~~((of))~~ and towns with populations of three thousand or less in the county, if any, to be designated by the president of the association of Washington cities: PROVIDED, That if there should not be ((neither a first class nor a second class)) a city ((within)) in the county with a population of ten thousand or more, the mayor, or the mayor's representative, of each ((fourth class)) city or town with a population of less than three thousand shall be a member;

(7) The ~~((chairman))~~ chair of the county legislative authority; and

(8) The county auditor.

**Sec. 2. RCW 29.07.105 and 1971 ex.s. c 202 s 14 are each amended to read as follows:*

In all cities ~~((of the first, second and third class)) or towns with populations of three thousand or more, the governing body shall by ordinance with the consent of the county auditor provide for additional temporary registration facilities during the fifteen day period, excepting Sundays, prior to the last day to register in order to be eligible to vote at a state primary ((election)) and during the fifteen day period, excepting Sundays, prior to the last day to register in order to be eligible to vote at a state general election by stationing deputy registrars at stores, public buildings or other temporary locations. The county auditor may deputize additional deputy registrars for the periods of temporary registration if so requested by the governing body of the city or town. The number of such temporary registration places to be so established and the hours to be maintained shall be, in the judgment of the governing body of the city or town concerned, adequate to afford ample opportunity for all qualified electors to register for voting, but in no event shall there be less than two such temporary registration places so established. Nothing in this section shall preclude door-to-door registration including registration from a portable office as in a trailer.~~

**Sec. 2 was vetoed, see message at end of chapter.*

Sec. 3. RCW 35.01.010 and 1965 c 7 s 35.01.010 are each amended to read as follows:

A first class city is ((one having at least twenty thousand inhabitants)) a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under Article XI, section 10, of the state Constitution.

Sec. 4. RCW 35.01.020 and 1965 c 7 s 35.01.020 are each amended to read as follows:

A second class city is ~~((one having at least ten thousand inhabitants))~~ a city with a population of more than fifteen hundred at the time of its organization or reorganization that does not have a charter adopted under Article XI, section 10, of the state Constitution, and does not operate under Title 35A RCW.

Sec. 5. RCW 35.01.040 and 1965 c 7 s 35.01.040 are each amended to read as follows:

A ~~((municipal corporation of the fourth class, which shall be known as a town, is one having not less than three hundred inhabitants and not more than fifteen hundred inhabitants))~~ town has a population of fifteen hundred or less at the time of its organization and does not operate under Title 35A RCW.

Sec. 6. RCW 35.02.005 and 1986 c 234 s 1 are each amended to read as follows:

The purpose of chapter 35.02 RCW is to provide a clear and uniform process for the incorporation of cities or towns operating under either Title 35 or 35A RCW. An incorporation may result in the creation of a second class city ~~((, third class city,))~~ or town operating under Title 35 RCW ~~((,))~~ or a noncharter code city operating under Title 35A RCW.

Sec. 7. RCW 35.06.010 and 1965 c 7 s 35.06.010 are each amended to read as follows:

A city or town which has ~~((, as ascertained by a local census, or which has on the first day of January in any year according to an official report or abstract of the then next preceding federal or state census,))~~ at least ~~((twenty))~~ ten thousand inhabitants may become a first class city ~~((of the first class, a city or town which has, when ascertained in the same way, at least ten thousand inhabitants may become a city of the second class, a city or town which has, when ascertained in the same way,))~~ by adopting a charter under Article XI, section 10, of the state Constitution in chapter 35.22 RCW.

A town which has at least fifteen hundred inhabitants may reorganize and advance its classification to become a second class city ~~((of the third class))~~ as provided in this chapter.

Sec. 8. RCW 35.06.070 and 1965 c 7 s 35.06.070 are each amended to read as follows:

~~((It shall be the duty of said board to cause a record of such action to be made, and when the clerk of the board has made the record, he shall certify and forward to the secretary of state a transcript thereof, whereupon the corporation shall be a city of the third, second, or first class, as the case may be, to be organized and governed under the provisions of this title, and))~~ A ballot proposition authorizing an advancement in classification of a town to a second class city shall be submitted to the voters of the town if either: (1) Petitions proposing the advancement are submitted to the town clerk that have been signed by voters of the town equal in number to at least ten percent of the voters of the

town voting at the last municipal general election; or (2) the town council adopts a resolution proposing the advancement. The clerk shall immediately forward the petitions to the county auditor who shall review the signatures and certify the sufficiency of the petitions.

A ballot proposition authorizing an advancement shall be submitted to the town voters at the next municipal general election occurring forty-five or more days after the petitions are submitted if the county auditor certifies the petitions as having sufficient valid signatures. The town shall be advanced to a second class city if the ballot proposition is approved by a simple majority vote, effective when the corporation is actually (~~organized by the election and qualification of its officers, notice of its existence as such shall be taken in all judicial proceedings~~) reorganized and the new officers are elected and qualified. The county auditor shall notify the secretary of state if the advancement of a town to a second class city is approved.

Sec. 9. RCW 35.06.080 and 1965 c 106 s 1 are each amended to read as follows:

The first election of officers of the new corporation after (~~such proceedings~~) the advancement of classification is approved shall be at the next general municipal election (~~or at a special election to be called for that purpose~~), and the officers of the old corporation, as altered by the election when the advancement was approved, shall remain in office until the officers of the new corporation are elected and qualified(~~;~~) and assume office in accordance with RCW 29.04.170. A primary shall be held where necessary to nominate candidates for the elected offices of the corporation as a second class city. Candidates for city council positions shall run for specific council positions. The council of the old corporation may adopt a resolution providing that the offices of city attorney, clerk, and treasurer are appointive.

The three persons who are elected to council positions one through six receiving the greatest number of votes shall be elected to four-year terms of office and the other three persons who are elected to council positions one through six, and the person elected to council position seven, shall be elected to two-year terms of office. The person elected as mayor and the persons elected to any other elected office shall be elected to four-year terms of office. All successors to all elected positions, other than council position number seven, shall be elected to four-year terms of office and successors to council position number seven shall be elected to two-year terms of office.

There shall be no election of town offices at this election when the first officers of the new corporation are elected and the offices of the town shall expire when the officers of the new corporation assume office.

The ordinances, bylaws, and resolutions adopted by the old corporation shall, as far as consistent with the provisions of this title, continue in force until repealed by the council of the new corporation(~~;~~ and).

The council and officers of the ~~((old corporation))~~ town shall, upon demand, deliver to the proper officers of the new corporation all books of record, documents, and papers in their possession belonging to the old corporation.

Sec. 10. RCW 35.07.010 and 1965 c 7 s 35.07.010 are each amended to read as follows:

Cities ~~((of the third class))~~ and towns ~~((having a population of less than four thousand inhabitants))~~ may disincorporate.

Sec. 11. RCW 35.13.180 and 1983 1st ex.s. c 68 s 1 are each amended to read as follows:

City and town councils of second ~~((and third))~~ class cities and towns may by a majority vote annex new unincorporated territory outside the city or town limits, whether contiguous or noncontiguous for park, cemetery, or other municipal purposes when such territory is owned by the city or town or all of the owners of the real property in the territory give their written consent to the annexation.

Sec. 12. RCW 35.13.190 and 1965 c 7 s 35.13.190 are each amended to read as follows:

Any unincorporated area contiguous to a second ~~((or third))~~ class city or town may be annexed thereto by an ordinance accepting a gift, grant, or lease from the government of the United States of the right to occupy, control, improve it or sublet it for commercial, manufacturing, or industrial purposes: PROVIDED, That this shall not apply to any territory more than four miles from the corporate limits existing before such annexation.

Sec. 13. RCW 35.13.200 and 1965 c 7 s 35.13.200 are each amended to read as follows:

In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a second ~~((or third))~~ class city or town may include such tide and shore lands as may be necessary or convenient for the use thereof, may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease and may provide in the ordinance for the annexed territory to become a separate ward of the city or town or part or parts of adjacent wards.

Sec. 14. RCW 35.13.210 and 1965 c 7 s 35.13.210 are each amended to read as follows:

A second ~~((or third))~~ class city or town may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public

improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's or town's current expense fund.

Sec. 15. RCW 35.13.280 and 1983 c 3 s 54 are each amended to read as follows:

The annexation by any city or town of any territory pursuant to those provisions of chapter 35.10 RCW which relate to the annexation of a (~~third class~~) city or town to a (~~first class~~) city or town, or pursuant to the provisions of chapter 35.13 RCW shall cancel, as of the effective date of such annexation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such annexed territory, authorizing or otherwise permitting the operation of any public transportation, garbage collection and/or disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing city or town a franchise to continue such business within the annexed territory for a term of not less than five years from the date of issuance thereof, and the annexing city or town, by franchise, permit or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said annexed territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the annexing city or town of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any annexation pursuant to the provisions of the laws above-mentioned, such person, firm or corporation shall have a right of action against any city or town causing such damages.

Sec. 16. RCW 35.23.170 and 1973 c 76 s 1 are each amended to read as follows:

~~((City))~~ Councils of second class cities (~~of the second, third and fourth class~~) and towns may provide by ordinance, for a board of park commissioners, not to exceed seven in number, to be appointed by the mayor, with the consent of the city council, from citizens of recognized fitness for such position. (~~No person shall be ineligible as a commissioner by reason of sex and~~) No commissioner shall receive any compensation. The first commissioners shall determine by lot whose term of office shall expire each year, and a new commissioner shall be appointed annually to serve for a term of years corresponding in number to the number of commissioners in order that one term shall expire each year. Such board of park commissioners shall have only such powers and authority with respect to the management, supervision, and control

of parks and recreational facilities and programs as are granted to it by the ~~((legislative body of cities of the second, third, and fourth class))~~ council.

Sec. 17. RCW 35.23.270 and 1965 c 7 s 35.23.270 are each amended to read as follows:

A majority of the ~~((councilmen))~~ councilmembers shall constitute a quorum for the transaction of business. A less number may compel the attendance of absent members and may adjourn from time to time. The council shall determine its rules of proceedings. The council may punish their members for disorderly conduct and upon written charges entered upon the journal therefor, may, after trial, expel a member by two-thirds vote of all the members elected. All orders of the city council shall be entered upon the journal of its proceedings, which journal shall be signed by the officer who presided at the meeting. The journal shall be kept by the clerk under the council's direction.

Sec. 18. RCW 35.23.352 and 1993 c 198 s 10 are each amended to read as follows:

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

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond.

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

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

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

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

(4) (~~After September 1, 1987, each second class city, third class city, and town shall use~~) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

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

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

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

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

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

conditions, and recites why this situation exists. Such actions are subject to RCW 39.30.020.

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

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

Sec. 19. RCW 35.23.440 and 1993 c 83 s 5 are each amended to read as follows:

The city council of each second class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tippling houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified: PROVIDED, That on

any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gaming and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband

said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for more than one year, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties, but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

~~((31)) (Elections: To provide for conducting elections and establishing election precincts when necessary, to be as near as may be in conformity with the state law.~~

~~((32))~~ (32) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

~~((33))~~ (32) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

~~((34))~~ (33) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

~~((35))~~ (34) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

~~((36))~~ (35) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

~~((37))~~ (36) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

~~((38))~~ (37) Franchises: To permit the use of the streets for railroad or other public service purposes.

~~((39))~~ (38) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

~~((40))~~ (39) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and may prescribe his term of office, and the fees he shall

receive for his services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

~~((41))~~ (40) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

~~((42))~~ (41) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

~~((43))~~ (42) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

~~((44))~~ (43) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

~~((45))~~ (44) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

~~((46))~~ (45) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

~~((47))~~ (46) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

~~((48))~~ (47) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

~~((49))~~ (48) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

~~((50))~~ (49) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which

stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

~~((51))~~ (50) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

~~((52))~~ (51) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

~~((53))~~ (52) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

~~((54))~~ (53) To provide for the general welfare.

Sec. 20. RCW 35.23.455 and 1965 c 154 s 1 are each amended to read as follows:

The legislative body of any second(~~(, third or fourth class municipality))~~ class city or town which contains, or abuts upon, any bay, lake, sound, river or other navigable waters, may construct, operate and maintain any boat harbor, marina, dock or other public improvement, for the purposes of commerce, recreation or navigation.

Sec. 21. RCW 35.23.460 and 1991 sp.s. c 30 s 19 are each amended to read as follows:

Subject to chapter 48.62 RCW, any second class city (~~(of the second or third class))~~ or town may contract with an insurance company authorized to do business in this state to provide group insurance for its employees including group false arrest insurance for its law enforcement personnel, and pursuant thereto may use a portion of its revenues to pay an employer's portion of the premium for such insurance, and may make deductions from the payrolls of employees for the amount of the employees' contribution and may apply the amount deducted in payment of the employees' portion of the premium.

Sec. 22. RCW 35.23.470 and 1973 1st ex.s. c 195 s 16 are each amended to read as follows:

Every city of the second class (~~(having less than eighteen thousand inhabitants))~~ may create a publicity fund to be used exclusively for exploiting

and advertising the general advantages and opportunities of the city and its vicinity. After providing by ordinance for a publicity fund the city council may use therefor an annual amount not exceeding sixty-two and one-half cents per thousand dollars of assessed valuation of the taxable property in the city.

Sec. 23. RCW 35.23.570 and 1965 c 7 s 35.23.570 are each amended to read as follows:

Before letting any contract for the construction of any waterworks for irrigation and domestic purposes, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment district, if the same is to be constructed at the expense of the district, and such cities and towns are authorized to charge the expense of such waterworks for irrigation and domestic purposes to all the property included within such district which is contiguous or proximate to any streets in which any main pipe or lateral pipe of such waterworks for irrigation and domestic purposes, is to be placed, and to levy special ~~((taxes))~~ assessments upon such property to pay therefor, which assessment ~~((and tax))~~ shall be levied in accordance with the last general assessment of the property within said district for city purposes.

Sec. 24. RCW 35.23.020 and 1987 c 3 s 6 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the elective officers ~~((of a city of the second class))~~ shall consist of a mayor, twelve ~~((councilmen))~~ councilmembers, a city clerk, and a city treasurer.

Sec. 25. RCW 35.23.040 and 1987 c 3 s 7 are each amended to read as follows:

~~((A general municipal election shall be held biennially in second class cities not operating under the commission form of government in each odd-numbered year as provided in RCW 29.13.020.))~~

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the terms of office of mayor, city clerk, city treasurer and ~~((councilmen in such cities))~~ councilmembers shall be four years, and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170, but not more than six ~~((councilmen))~~ councilmembers normally shall be elected in any one year to fill a full term.

Sec. 26. RCW 35.23.080 and 1965 c 7 s 35.23.080 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall be the chief executive officer of the city~~((—He))~~ and shall:

(1) Have general supervision over the several departments of the city government and over all its interests;

(2) Preside over the city council when present;

(3) Once in three months, submit a general statement of the condition of the various departments and recommend to the city council such measures as ~~((he may))~~ the mayor deems expedient for the public health or improvement of the city, its finances or government; and

(4) Countersign all warrants and licenses, deeds, leases and contracts requiring signature issued under and by authority of the city.

If there is a vacancy in the office of mayor or ~~((he))~~ the mayor is absent from the city, or is unable from any cause to discharge the duties of ~~((his))~~ the office, the president of the council shall act as mayor, exercise all ~~((his))~~ the powers and be subject to all ~~((his))~~ the duties of the mayor.

Sec. 27. RCW 35.23.120 and 1965 c 7 s 35.23.120 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the appointive officers ~~((of a city of the second class))~~ shall be a chief of police, city attorney, health officer, and street commissioner; the council may also create by ordinance the offices of superintendent of irrigation, city engineer, harbor master, pound keeper, city jailer, chief of the fire department, and any other offices necessary to discharge the functions of the city and for whose election or appointment no other provision is made. If a paid fire department is established therein a chief engineer and one or more assistant engineers may be appointed. If a free library and reading room is established therein five library trustees shall be appointed. The council by ordinance shall prescribe the duties of the officers and fix their compensation subject to the provisions of any statutes pertaining thereto.

Sec. 28. RCW 35.23.150 and 1965 c 7 s 35.23.150 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the ~~((city))~~ council shall create the office of city health officer, prescribe ~~((his))~~ the duties and qualifications of this office and fix ~~((his))~~ the compensation for the office.

Sec. 29. RCW 35.23.160 and 1965 c 7 s 35.23.160 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the street commissioner shall be under the direction of the mayor and city council shall have control of the streets and public places of the city and shall perform such duties as the city council may prescribe.

Sec. 30. RCW 35.23.180 and 1965 c 7 s 35.23.180 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall appoint all the appointive officers of the city subject to confirmation by the city council. If the council refuses to confirm any nomination of the mayor, ~~((he))~~ the mayor shall nominate another person for that office within ten days thereafter, and may continue to so nominate until ~~((his))~~ a nominee is confirmed. If the mayor fails to make another nomination for the same office within ten days after the rejection of a nominee, the city council shall elect a suitable person to fill the office during the term. The affirmative vote of not less than seven ~~((councilmen))~~ councilmembers is necessary to confirm any nomination made by the mayor.

Sec. 31. RCW 35.23.190 and 1987 c 3 s 8 are each amended to read as follows:

Before entering upon ~~((his))~~ official duties and within ten days after receiving notice of ~~((his election or appointment))~~ being elected or appointed to city office, every officer of ~~((he))~~ a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city shall qualify by taking the oath of office and by filing such bond duly approved as may be required ~~((of him))~~. The oath of office shall be filed with the county auditor. If no notice of election or appointment was received, the officer must qualify on or before the date fixed for the assumption ~~((by him))~~ of the duties of the office ~~((to which he was elected or appointed))~~. The city council shall fix the amount of all official bonds and may designate what officers shall be required to give bonds in addition to those required to do so by statute.

~~((The clerk, treasurer, city attorney, chief of police, and street commissioner shall each execute an official bond in such penal sum as the city council by ordinance may determine, conditioned for the faithful performance of their duties, including in the same bond the duties of all offices of which he is the ex officio incumbent.))~~

All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk except the city clerk's which shall be filed with the mayor. No city officer shall be eligible as a surety upon any bond running to the city as obligee.

The city council may require a new or additional bond of any officer whenever it deems it expedient.

Sec. 32. RCW 35.23.250 and 1965 c 7 s 35.23.250 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor and twelve ~~((councilmen))~~ councilmembers

shall constitute the city council (~~(and at their first meeting after taking office)~~), At the first council meeting in each calendar year, the city council shall elect one of their own body to serve as president of the council.

The mayor shall preside at all meetings at which (~~he~~) the mayor is present. In the absence of the mayor, the president of the council shall preside. In the absence of both the mayor and the president of the council, the council may elect a president pro tempore from its own body (~~(or any other elector of the city may be elected president pro tempore)~~). The president pro tempore shall have all the powers of the president of the council during the session of the council at which the president pro tempore is presiding (~~(except that if he is not a member of the council he shall have no vote)~~).

Sec. 33. RCW 35.23.280 and 1965 c 7 s 35.23.280 are each amended to read as follows:

In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall have a vote only in the case of a tie in the votes of the (~~(councilmen)~~) councilmembers. The president of the council while presiding or the president pro tempore (~~(if a councilman)~~) shall have the right to vote upon all questions coming before the council.

A majority of all the members elected shall be necessary to pass any ordinance appropriating for any purpose the sum of five hundred dollars or upwards or any ordinance imposing any assessment, tax, or license or in any wise increasing or diminishing the city revenue.

Sec. 34. RCW 35.23.530 and 1965 c 7 s 35.23.530 are each amended to read as follows:

~~(At any time not within three months previous to an annual election the city council of a second class city)~~ In any city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the city council may divide the city into wards, not exceeding six in all, or change the boundaries of existing wards at any time less than one hundred twenty days before a municipal general election. No change in the boundaries of wards shall affect the term of any (~~(councilman, but he shall serve out his term in the ward of his residence at the time of his election)~~) councilmember; PROVIDED, That if this results in one ward being represented by more (~~(councilmen)~~) councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy. Wards shall be redrawn as provided in RCW 29.70.100.

The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

No person shall be eligible to the office of (~~(councilman)~~) councilmember unless (~~he~~) the councilmember resides in the ward for which (~~he~~) the councilmember is elected on the date of (~~his~~) the election and removal of

~~((his))~~ the councilmember's residence from the ward for which ~~((he))~~ the councilmember was elected renders ~~((his))~~ the office vacant.

Sec. 35. RCW 35.24.020 and 1993 c 47 s 1 are each amended to read as follows:

The government of a ~~((third))~~ second class city shall be vested in a mayor, a city council of seven members, a city attorney, a clerk, a treasurer, all elective; and a chief of police, municipal judge, city engineer, street superintendent, health officer and such other appointive officers as may be provided for by ~~((statute or))~~ ordinance: PROVIDED, That the council may enact an ordinance providing for the appointment of the city clerk, city attorney, and treasurer by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council. Such ordinance shall be enacted and become effective not later than thirty days prior to the first day allowed for filing declarations of candidacy for such offices when such offices are subject to an approaching city primary election. Elective incumbent city clerks, city attorneys, and city treasurers shall serve for the remainder of their unexpired term notwithstanding any appointment made pursuant to ~~((RCW 35.24.020))~~ this section and RCW 35.24.050. If a free public library and reading room is established, five library trustees shall be appointed. The city council by ordinance shall prescribe the duties and fix the compensation of all officers and employees: PROVIDED, That the provisions of any such ordinance shall not be inconsistent with any statute: PROVIDED FURTHER, That where the city council finds that the appointment of a full time city engineer is unnecessary, it may in lieu of such appointment, by resolution provide for the performance of necessary engineering services on either a part time, temporary or periodic basis by a qualified engineering firm, pursuant to any reasonable contract.

The mayor shall appoint and at his or her pleasure may remove all appointive officers except as otherwise provided herein: PROVIDED, That municipal judges shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of his or her office. Every appointment or removal must be in writing signed by the mayor and filed with the city clerk.

Sec. 36. RCW 35.24.050 and 1979 ex.s. c 126 s 22 are each amended to read as follows:

General municipal elections in ~~((third))~~ second class cities not operating under the commission form of government shall be held biennially in the odd-numbered years ~~((as provided in RCW 29.13.020))~~ and shall be subject to general election law.

The terms of office of the mayor, city attorney, clerk, and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, That if the offices of city attorney, clerk, and treasurer are made appointive, the city attorney, clerk, and treasurer shall not be appointed for a definite term: PROVIDED FURTHER,

That the term of the elected treasurer shall not commence in the same biennium in which the term of the mayor commences, nor in which the terms of the city attorney and clerk commence if they are elected.

~~((A councilman at large shall be elected biennially for a two-year term and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. Of the other six councilmen, three shall be elected in each biennial general municipal election for terms of four years and until their successors are elected and qualified and assume))~~ Council positions shall be numbered in each second class city so that council position seven has a two-year term of office and council positions one through six shall each have four-year terms of office. Each councilmember shall remain in office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

In its discretion the council of a second class city may divide the city by ordinance, into a convenient number of wards, not exceeding six, fix the boundaries of the wards, and change the ward boundaries from time to time and as provided in RCW 29.70.100. No change in the boundaries of any ward shall be made within one hundred twenty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmembers to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmembers so designated shall be elected by the voters resident in such ward, or by general vote of the whole city as may be designated in such ordinance. Council position seven shall not be associated with a ward and the person elected to that position may reside anywhere in the city and voters throughout the city may vote at a primary to nominate candidates for position seven, when a primary is necessary, and at a general election to elect the person to council position seven. When additional territory is added to the city it may by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. The removal of a councilmember from the ward for which he or she was elected shall create a vacancy in such office.

Sec. 37. RCW 35.24.080 and 1987 c 3 s 10 are each amended to read as follows:

In a city of the ~~((third))~~ second class, the treasurer, city attorney, clerk, chief of police, and such other officers as the council may require shall each, before entering upon the duties of ~~((his))~~ office, take an oath of office and execute and file with the clerk an official bond in such penal sum as the council shall determine, conditioned for the faithful performance of his or her duties and otherwise conditioned as may be provided by ordinance. The oath of office shall be filed with the county auditor.

Sec. 38. RCW 35.24.100 and 1965 c 7 s 35.24.100 are each amended to read as follows:

~~((In cities of the third class if a member of the city council absents himself))~~
The council of a second class city may declare a council position vacant if the councilmember is absent for three consecutive regular meetings ((thereof, unless by)) without permission of the council((, his office may be declared vacant by the council)). Vacancies in all elected offices shall accrue as provided in RCW 42.12.010.

Vacancies in the city council or in the office of mayor shall be filled by majority vote of the council. Vacancies in offices other than that of mayor or city ~~((councilman))~~ councilmember shall be filled by appointment of the mayor.

If a vacancy occurs in an elective office the appointee shall hold office only until the next ~~((regular))~~ municipal general election occurring within thirty or more days from the date of the occurrence of the vacancy at which a person shall be elected to serve for the remainder of the unexpired term.

If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed.

Sec. 39. RCW 35.24.142 and 1969 c 116 s 3 are each amended to read as follows:

The city council of any city of the ~~((third))~~ second class is authorized to provide by ordinance that the office of treasurer shall be combined with that of clerk, or that the office of clerk shall be combined with that of treasurer: PROVIDED, That such ordinance shall not be voted upon until the next regular meeting after its introduction.

Sec. 40. RCW 35.24.160 and 1987 c 3 s 11 are each amended to read as follows:

The department of police in a city of the ~~((third))~~ second class shall be under the direction and control of the chief of police subject to the direction of the mayor. ~~((He))~~ Any police officer may pursue and arrest violators of city ordinances beyond the city limits.

~~((His lawful orders shall be promptly executed by deputies, police officers and watchmen.))~~ Every citizen shall lend ~~((him))~~ the police chief aid, when required, for the arrest of offenders and maintenance of public order. With the concurrence of the mayor, ~~((he))~~ the police chief may appoint additional ~~((policemen))~~ police officers to serve for one day only under ~~((his))~~ orders of the chief in the preservation of public order.

~~((He))~~ The police chief shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

~~((He))~~ The police chief shall perform such other services as may be required by statute or ordinances of the city.

~~((He shall execute and return all process issued and directed to him by lawful authority and for his services shall receive the same fees as are paid to constables.))~~

Sec. 41. RCW 35.24.190 and 1969 c 101 s 3 are each amended to read as follows:

The members of the city council, at their first meeting ~~((after each general municipal election))~~ each calendar year and thereafter whenever a vacancy occurs in the office of mayor pro tempore, shall elect from among their number a mayor pro tempore, who shall hold office at the pleasure of the council and in case of the absence of the mayor, perform the duties of mayor except that he or she shall not have the power to appoint or remove any officer or to veto any ordinance. If a vacancy occurs in the office of mayor, the city council at their next regular meeting shall elect from among their number a mayor, who shall serve until a mayor is elected and certified at the next municipal election.

The mayor and the mayor pro tempore shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor or the mayor pro tempore when acting as mayor, shall sign all conveyances made by the city and all instruments which require the seal of the city.

Sec. 42. RCW 35.24.200 and 1965 c 107 s 1 are each amended to read as follows:

~~((At all meetings of the city council, a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.))~~

All meetings of the council shall be presided over by the mayor, or, in ~~((his))~~ the mayor's absence, by the mayor pro tempore. The mayor shall have a vote only in the case of a tie in the votes of the ~~((councilmen))~~ councilmembers. If the clerk is absent from a council meeting, the mayor or mayor pro tempore shall appoint one of the members of the council as clerk pro tempore. The appointment of a ~~((councilman))~~ councilmember as mayor pro tempore or clerk pro tempore shall not in any way abridge ~~((his))~~ the councilmember's right to vote upon all questions coming before the council.

~~((The city council may establish rules for the conduct of their proceedings and punish any member or other person for disorderly behavior at any meeting.))~~

The clerk shall keep a correct journal of all proceedings and at the desire of any member the ayes and noes shall be taken on any question and entered in the journal.

Sec. 43. RCW 35.24.210 and 1965 c 7 s 35.24.210 are each amended to read as follows:

The enacting clause of all ordinances in a ~~((third))~~ second class city shall be as follows: "The city council of the city of do ordain as follows:"

No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section at full length.

No ordinance and no resolution or order shall have any validity or effect unless passed by the votes of at least four (~~(councilmen)~~) councilmembers.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided in this title.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if (~~(he)~~) the mayor approves it, (~~(he)~~) the mayor shall sign it, but if not, (~~(he)~~) the mayor shall return it with (~~(his)~~) written objections to the council and the council shall cause (~~(his)~~) the mayor's objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration five members of the council voting upon a call of yeas and nays favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without (~~(his)~~) the approval of the mayor.

Every ordinance shall be signed by the mayor and attested by the clerk.

Sec. 44. RCW 35.24.305 and 1965 c 7 s 35.24.305 are each amended to read as follows:

All (~~(cities of the third class, regardless of their form of government, and all municipal corporations of the fourth class (towns), are hereby)~~) second class cities and towns are authorized to use parking meter revenue as a base for obtaining revenue bonds for use in improvement of streets, roads, alleys, and such other related public works.

Sec. 45. RCW 35.24.306 and 1965 c 7 s 35.24.306 are each amended to read as follows:

(~~(In incorporated cities of the third class)~~) A second class city, where commercial ambulance service is not readily available, (~~(the city)~~) shall have the power:

(1) To authorize the operation of municipally-owned ambulances which may serve the city and may serve for emergencies surrounding rural areas;

(2) To authorize the operation of other municipally-owned first aid equipment which may serve the city and surrounding rural areas;

(3) To contract with the county or with another municipality for emergency use of city-owned ambulances or other first aid equipment: PROVIDED, That the county or other municipality shall contribute at least the cost of maintenance and operation of the equipment attributable to its use thereof; and

(4) To provide that such ambulance service may be used to transport persons in need of emergency hospital care to hospitals beyond the city limits.

The council may, in its discretion, make a charge for the service authorized by this section: PROVIDED, That such ambulance service shall not enter into competition or competitive bidding where private ambulance service is available.

Sec. 46. RCW 35.24.330 and 1965 c 7 s 35.24.330 are each amended to read as follows:

Every act or thing done or being within the limits of a (~~third~~) second class city which is declared by law or by ordinance to be a nuisance shall be a nuisance and shall be so considered in all actions and proceedings. All remedies given by law for the prevention and abatement of nuisances shall apply thereto.

Sec. 47. RCW 35.24.370 and 1973 1st ex.s. c 154 s 51 are each amended to read as follows:

A (~~third~~) second class city may impose upon and collect from every inhabitant of the city over the age of eighteen years an annual street poll tax not exceeding two dollars and no other road poll tax shall be collected within the limits of the city.

Sec. 48. RCW 35.24.400 and 1965 c 7 s 35.24.400 are each amended to read as follows:

The city treasurer of any (~~third~~) second class city, by and with the consent of the (~~city's~~) city council or finance committee of the city council, may invest any portion of its local improvement guaranty fund in the city's own guaranteed local improvement bonds in an amount not to exceed ten percent of the total issue of bonds in any one local improvement district: PROVIDED, That no such investment shall be made in an amount which will affect the ability of the local improvement guaranty fund to meet its obligations as they accrue, and that if all the bonds have the same maturity, the bonds having the highest numbers shall be purchased.

The interest received shall be credited to the local improvement guaranty fund.

Sec. 49. RCW 35.24.410 and 1965 c 7 s 35.24.410 are each amended to read as follows:

The city council of every city of the (~~third~~) second class may contract for supplying the city with water, light, power, and heat for municipal purposes; and within or without the city may acquire, construct, repair, and manage pumps, aqueducts, reservoirs, plants, or other works necessary or proper for irrigation purposes or for supplying water, light, power, or heat or any byproduct thereof for the use of the city and any person within the city and dispose of any excess of its supply to any person without the city.

Sec. 50. RCW 35.24.420 and 1965 c 7 s 35.24.420 are each amended to read as follows:

To pay the original cost of water, light, power, or heat systems, every city of the (~~third~~) second class may issue:

(1) General bonds to be retired by general tax levies against all the property within the city limits then existing or as they may thereafter be extended; or

(2) Utility bonds under the general authority given to all cities for the acquisition or construction of public utilities.

Extensions to plants may be made either

(1) By general bond issue,

(2) By general tax levies, or

(3) By creating local improvement districts in accordance with statutes governing their establishment.

Sec. 51. RCW 35.24.440 and 1965 c 7 s 35.24.440 are each amended to read as follows:

Proceedings attacking the validity of the consolidation of a city of the ~~((third))~~ second class or the annexation of territory to a city of the ~~((third))~~ second class shall be by quo warranto only, instituted by the prosecuting attorney of the county in which the city is located or by a person interested in the proceedings whose interest must clearly be shown. The quo warranto proceedings must be commenced within one year after the consolidation or annexation proceedings complained of and no error, irregularity, or defect of any kind shall be the basis for invalidating a consolidation or annexation after one year.

Sec. 52. RCW 35.24.455 and 1984 c 258 s 206 are each amended to read as follows:

A city of the ~~((third))~~ second class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

Sec. 53. RCW 35.27.010 and 1965 c 7 s 35.27.010 are each amended to read as follows:

Every ~~((municipal corporation of the fourth class))~~ town shall be entitled the "Town of" (naming it), and by such name shall have perpetual succession, may sue, and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the

town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property and control and dispose of the same for the common benefit.

Sec. 54. RCW 35.27.550 and 1965 c 7 s 35.27.550 are each amended to read as follows:

Towns (~~(of the fourth class)~~) are authorized to provide off-street parking space and facilities for motor vehicles, and the use of real property for such purpose is declared to be a public use.

Sec. 55. RCW 35.31.050 and 1965 c 7 s 35.31.050 are each amended to read as follows:

Every city of the second (~~(or third)~~) class and town may create an accident fund upon which the clerk shall draw warrants for the full amount of any judgment including interest and costs against the city or town on account of personal injuries suffered by any person as shown by a transcript of the judgment duly certified to the clerk. The warrants shall be issued in denominations not less than one hundred dollars nor more than five hundred dollars; they shall draw interest at the rate of six percent per annum, shall be numbered consecutively and be paid in the order of their issue.

Sec. 56. RCW 35.34.040 and 1985 c 175 s 7 are each amended to read as follows:

All first(~~(-)~~) and second(~~(-and third)~~) class cities and towns are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all cities and towns which utilize a fiscal biennium budget. Cities and towns which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city or town shall comply with chapter 35.32A or 35.33 RCW, whichever the case may be, in developing and adopting the budget for the first fiscal year following repeal of the ordinance.

Sec. 57. RCW 35.55.010 and 1965 c 7 s 35.55.010 are each amended to read as follows:

If the city council of any city of the second (~~(and third)~~) class deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade of any marshlands, swamplands, tidelands, shorelands, or lands commonly known as tideflats, or any other lowlands situated within the limits of the city, and to clear and prepare the lands for such filling, it may do so and assess the expense thereof, including the cost of making compensation for property taken or damaged, and all other costs and expense incidental to such improvement, to the property benefited, except such amount of such expense as the city council may direct to be paid out of the current or general expense fund.

If, in the judgment of the city council the special benefits for any such improvement shall extend beyond the boundaries of the filled area, the council

may create an enlarged district which shall include, as near as may be, all the property, whether actually filled or not, which will be specially benefited by such improvement, and in such case the council shall specify and describe the boundaries of such enlarged district in the ordinance providing for such improvement and shall specify that such portion of the total cost and expense of such improvement as may not be borne by the current or general expense fund, shall be distributed and assessed against all the property of such enlarged district.

Sec. 58. RCW 35.55.130 and 1965 c 7 s 35.55.130 are each amended to read as follows:

The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city, other than a city operating under the council-manager form or the commission form, shall be made only by ordinance passed by the vote of not less than nine (~~(councilmen)~~) councilmembers and the approval of the mayor in (~~(cities of the second class)~~) noncharter code cities that retained the old second class city plan of government with twelve council positions, and six (~~(councilmen)~~) councilmembers and approval of the mayor in cities of the (~~(third)~~) second class. In a city under the council-manager form of government, such guaranties shall be made only in an ordinance passed by a vote of three out of five or five out of seven (~~(councilmen)~~) councilmembers, as the case may be, and approval of the mayor. In a city under the commission form of government, such guaranties shall be made only in an ordinance passed by a vote of two out of three of the commissioners. The mayor's approval shall not be necessary in commission form cities.

Sec. 59. RCW 35.56.010 and 1965 c 7 s 35.56.010 are each amended to read as follows:

If the city council or commission of any city of the first(~~(or)~~) or second (~~(or third)~~) class in this state deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marshlands, swamplands, tidelands or lands commonly known as tideflats, or any other lands situated within the limits of such city and to clear and prepare said lands for such filling it may do so by proceeding in accordance with the provisions of this chapter.

For the purpose of filling and raising the grade or elevation of such lands and to secure material therefor and to provide for the proper drainage thereof after such fill has been effected, the city council or commission may acquire rights of way (and where necessary or desirable, may vacate, use and appropriate streets and alleys for such purposes) and lay out, build, construct and maintain over and across such lowlands, canals or artificial waterways of at least sufficient width, depth and length to provide and afford the quantity of earth, dirt and material required to complete such fill, and with the earth, dirt and material removed in digging and constructing such canals and waterways, fill and raise the grade or elevation of such marshlands, swamplands, tidelands or tideflats; and

such canals or waterways shall be constructed of such width and depth (provided that all the earth, dirt and other suitable material removed in constructing the same shall be used to fill the lowlands as herein provided) as will make them available, convenient and suitable to provide water frontage for landings, wharves and other conveniences of navigation and commerce for the use and benefit of the city and the public. If canals or waterways are to be constructed as herein provided, such city may construct and maintain the necessary bridges over and across the same; such canals or waterways shall be forever under the control of such city and shall be and become public thoroughfares and waterways for the use and benefit of commerce, shipping, the city and the public generally.

The expense of making such improvement and in doing, accomplishing and effecting all the work provided for in this chapter including the cost of making compensation for property taken or damaged, and all other cost and expense incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council or commission, in its discretion, may direct to be paid out of the current or general expense fund.

Sec. 60. RCW 35.61.010 and 1985 c 416 s 1 are each amended to read as follows:

Cities of five thousand or more population and such contiguous property the residents of which may decide in favor thereof in the manner set forth in this chapter may create a metropolitan park district for the management, control, improvement, maintenance, and acquisition of parks, parkways, and boulevards(~~(= PROVIDED, That no municipal corporation of the fourth class shall be included within such metropolitan park district, and any such fourth class municipal corporation heretofore included within such district is hereby automatically withdrawn)~~)).

Sec. 61. RCW 35.69.010 and 1965 c 7 s 35.69.010 are each amended to read as follows:

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

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

The term "sidewalk" includes any and all structures or forms of street improvement included in the space between the street margin and the roadway.

Sec. 62. RCW 35.70.020 and 1965 c 7 s 35.70.020 are each amended to read as follows:

In all cities of the (~~third~~) second class and towns the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon.

Sec. 63. RCW 35.70.100 and 1965 c 7 s 35.70.100 are each amended to read as follows:

This chapter shall not be construed as repealing or amending any provision relating to the improvement of streets or public places by special assessments

commonly known as local improvement laws, but shall be considered as additional legislation and auxiliary thereto and the city or town council, of any city of the ~~((third))~~ second class or town before exercising the authority herein granted may by ordinance provide for the application and enforcement of the provisions of this chapter within the limitations herein specified.

Sec. 64. RCW 35.86A.020 and 1969 ex.s. c 204 s 2 are each amended to read as follows:

Cities of the first~~((, second and third))~~ and second class are authorized and empowered to establish and maintain public off-street parking facilities through a parking commission; the use of property and property rights for such purpose is declared to be a public use; and parking facilities under the control of such parking commission shall be governed by the provisions of this chapter.

Sec. 65. RCW 35.86A.050 and 1969 ex.s. c 204 s 5 are each amended to read as follows:

Any city of the first~~((, second or third))~~ or second class may by ordinance create a parking commission for the purpose of establishing and operating off-street parking facilities.

Such parking commission shall consist of five members appointed by the mayor and confirmed by the city council, who shall serve without compensation but may be reimbursed for necessary expenses. One member of the parking commission shall be selected from among persons actively engaged in the private parking industry, if available.

Three of those first appointed shall be designated to serve for one, two, and three years respectively, and two shall be designated to serve four years. The terms for all subsequently appointed members shall be four years. In event of any vacancy, the mayor, subject to confirmation of the city council, shall make appointments to fill the unexpired portion of the term.

A member may be reappointed, and shall hold office until his or her successor has been appointed and has qualified. Members may be removed by the mayor upon consent of the city council.

Sec. 66. RCW 35A.01.070 and 1979 ex.s. c 18 s 1 are each amended to read as follows:

Where used in this title with reference to procedures established by this title in regard to a change of plan or classification of government, unless a different meaning is plainly required by the context:

(1) "Classify" means a change from a city of the first~~((, second, or third))~~ or second class, an unclassified city, or a town, to a code city.

(2) "Classification" means either that portion of the general law under which a city or a town operates under Title 35 RCW as a first~~((, second, or third))~~ or second class city, unclassified city, or town, or otherwise as a code city.

(3) "Organize" means to provide for officers after becoming a code city, under the same general plan of government under which the city operated prior to becoming a code city, pursuant to RCW 35A.02.055.

(4) "Organization" means the general plan of government under which a city operates.

(5) "Plan of government" means (~~either—the~~) a mayor-council form of government under chapter 35A.12 RCW, council-manager form of government under chapter 35A.13 RCW, or mayor-council, council-manager, or commission form of government in general that is retained by a noncharter code city as provided in RCW 35A.02.130, without regard to variations in the number of elective offices or whether officers are elective or appointive.

(6) "Reclassify" means changing from a code city to the classification, if any, held by such a city immediately prior to becoming a code city.

(7) "Reclassification" means changing from city or town operating under Title 35 RCW to a city operating under Title 35A RCW, or vice versa; a change in classification.

(8) "Reorganize" means changing the plan of government under which a city or town operates to a different general plan of government, for which an election of new officers under RCW 35A.02.050 is required. A city or town shall not be deemed to have reorganized simply by increasing or decreasing the number of members of its legislative body.

(9) "Reorganization" means a change in general plan of government where an election of all new officers is required in order to accomplish this change, but an increase or decrease in the number of members of its legislative body shall not be deemed to constitute a reorganization.

Sec. 67. RCW 35A.02.130 and 1967 ex.s. c 119 s 35A.02.130 are each amended to read as follows:

Any incorporated city or town governed under a plan of government authorized prior to the time this title takes effect may become a noncharter code city without changing such plan of government by the use of the petition-for-election or resolution-for-election procedures provided in RCW 35A.02.060 and 35A.02.070 to submit to the voters a proposal that such municipality adopt the classification of noncharter code city while retaining its existing plan of government, and upon a favorable vote on the proposal, such municipality shall be classified as a noncharter code city and retain its old plan of government, such reclassification to be effective upon the filing of the record of such election with the office of the secretary of state. Insofar as the provisions of RCW 35A.02.100 and 35A.02.110 are applicable to an election on such a reclassification proposal they shall apply to such election.

Sec. 68. RCW 35A.06.020 and 1967 ex.s. c 119 s 35A.06.020 are each amended to read as follows:

The classifications of municipalities which existed prior to the time this title goes into effect—first class cities, second class cities, (~~third class~~) unclassified cities, and (~~fourth class~~) towns—and the restrictions, limitations, duties, and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to noncharter code cities, but every noncharter code

city, by adopting such classification, has elected to be governed by the provisions of this title, with the powers granted hereby. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city abandons its old plan of government and reorganizes and adopts a plan of government under chapter 35A.12 or 35A.13 RCW.

Sec. 69. RCW 35A.06.030 and 1979 ex.s. c 18 s 14 are each amended to read as follows:

By use of the resolution for election or petition for election methods described in RCW 35A.06.040, any noncharter code city which has operated for more than six consecutive years under one of the optional plans of government authorized by this title, or for more than a combined total of six consecutive years under a particular plan of government both as a code city and under the same general plan under Title 35 RCW immediately prior to becoming a code city, may abandon such organization and may reorganize and adopt another plan of government authorized for noncharter code cities, but only after having been a noncharter code city for more than one year or a city after operating for more than six consecutive years under a particular plan of government as a noncharter code city (~~(or may reclassify and adopt a plan of government authorized by the general law for municipalities of the highest class for which the population of such city qualifies it, or authorized for the class to which such city belonged immediately prior to becoming a noncharter code city, if any)~~): PROVIDED, That these limitations shall not apply to a city seeking to adopt a charter.

In reorganization under a different general plan of government as a noncharter code city, officers shall all be elected as provided in RCW 35A.02.050. When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city ceases to be governed under this optional municipal code and shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law.

Sec. 70. RCW 35A.10.010 and 1967 ex.s. c 119 s 35A.10.010 are each amended to read as follows:

The classifications of municipalities which existed prior to the time this title goes into effect—first class cities, second class cities, (~~(third class)~~) unclassified cities, and (~~(fourth class)~~) towns—and the restrictions, limitations, duties and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to charter code cities, but every charter code city, by adopting such classification, has elected to be governed by its charter and by the provisions of this title, with the powers thereby granted.

Sec. 71. RCW 35A.12.010 and 1985 c 106 s 1 are each amended to read as follows:

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter

code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a mayor-council code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of ~~((councilmen))~~ councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

Sec. 72. RCW 35A.13.010 and 1987 c 3 s 16 are each amended to read as follows:

The ~~((councilmen))~~ councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code

city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members; PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a council-manager code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of ~~((councilmen))~~ councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

**Sec. 73. RCW 35A.29.150 and 1970 ex.s. c 52 s 5 are each amended to read as follows:*

Except as otherwise provided in this chapter, municipal elections in code cities having seven or more ~~((councilmen))~~ councilmembers shall be conducted in accordance with the applicable provisions of Title 29 RCW relating to elections in first~~((, second and third))~~ or second class cities and the municipal elections in code cities having five ~~((councilmen))~~ councilmembers shall be

conducted in accordance with the applicable provisions of Title 29 RCW relating to elections in ~~((fourth-class municipalities-))~~towns(~~(?)~~).

*Sec. 73 was vetoed, see message at end of chapter.

Sec. 74. RCW 36.94.050 and 1981 c 313 s 16 are each amended to read as follows:

Prior to the adoption of or amendment of the sewerage and/or water general plan, the county legislative authority (or authorities) shall submit the plan or amendment to a review committee. The review committee shall consist of:

(1) A representative of each ~~((first and second class))~~ city with a population of ten thousand or more within or adjoining the area selected by the mayor thereof (if there are no ~~((first or second class))~~ such cities within the plan area, then one representative chosen by the mayor of the city with the largest population within the plan area);

(2) One representative chosen at large by a majority vote of the executive officers of the other cities or towns within or adjoining the area;

(3) A representative chosen by the executive officer or the ~~((chairman))~~ chair of the board, as the case may be, of each of the other municipal corporations and private utilities serving one thousand or more sewer and/or water customers located within the area;

(4) One representative chosen at large by a majority vote of the executive officers and ~~((chairmen))~~ chairs of the boards, as the case may be, of the other remaining municipal corporations within the area;

(5) A representative of each county legislative authority within the planned area, selected by the ~~((chairman))~~ chair of each board or county executive, as the case may be; and

(6) In counties where there is a metropolitan municipal corporation operating a sewerage and/or water system in the area, the ~~((chairman))~~ chair of its council or such person as ~~((he))~~ the chair designates.

If the legislative authority rejects the plan pursuant to RCW 36.94.090, the review committee shall be deemed to be dissolved; otherwise the review committee shall continue in existence to review amendments to the plan. Vacancies on the committee shall be filled in the same manner as the original appointment to that position.

Instead of a review committee for each plan area, the county legislative authority or authorities may create a review committee for the entire county or counties, and the review committee shall continue in existence until dissolved by the county legislative authority or authorities.

Sec. 75. RCW 39.36.040 and 1923 c 45 s 1 are each amended to read as follows:

All orders, authorizations, allowances, contracts, payments or liabilities to pay, made or attempted to be made in violation of this chapter, shall be absolutely void and shall never be the foundation of a claim against a taxing district~~((:—PROVIDED, That the limitations imposed by this chapter shall not~~

~~apply to debts contracted by any taxing district prior to March 1, 1917; PROVIDED, FURTHER, That the limitations imposed by this chapter may be exceeded by cities of the second class for the purpose of constructing, renewing or repairing any bridge or bridges across any navigable waters located therein, and as to such indebtedness incurred for such purpose, the limits upon municipal indebtedness imposed by the state Constitution shall apply. No additional indebtedness shall be incurred by any city of the second class for the purpose last above mentioned without the assent of three fifths of the qualified voters of such city voting thereon at an election to be held therein for that purpose under and pursuant to the provisions of Sections 9538 to 9548, inclusive, of Remington's Compiled Statutes of Washington. Any such additional indebtedness so incurred shall not thereafter be taken into consideration in computing the limitation of indebtedness of such city under the provisions of this chapter).~~

Sec. 76. RCW 41.44.050 and 1971 ex.s. c 271 s 13 are each amended to read as follows:

Any city or town (~~of the first, second, third or fourth class~~) may elect to participate in the retirement system established by this chapter: PROVIDED, That a first class city may establish or maintain any other retirement system authorized by any other law or its charter. The manner of election to participate in a retirement system under this chapter shall be as follows:

- (1) The legislative body therein by ordinance making such election;
- (2) Approval by vote of the people of an ordinance initiated by the voters making such election;
- (3) Approval by vote of the people of an ordinance making such election referended to the people by the legislative body.

Any ordinance providing for participation therein may on petition of the voters be referended to the voters for approval or disapproval.

The referendum or initiative herein provided for shall be exercised under the law relating to legislative initiative or referendum of the particular city or town; and if the city or town be one for which the law does not now provide such initiative or referendum, it shall be exercised in the manner provided for legislative initiative and referendum of cities having a commission form of government under chapter (~~116, Laws of 1911~~) 35.17 RCW, the city or town council performing the duties and functions under that law devolving on the commission. A majority vote in the legislative body or by the electorate shall be sufficient to carry or reject. Whenever any city or town has elected to join the retirement system proper authorities in such city shall immediately file with the board an application for participation under the conditions included in this chapter on a form approved by the board. In such application the city or town shall agree to make the contributions required of participating cities in the manner prescribed herein and shall state which employee group or groups are to originally have membership in the system.

In the case of a state association of cities and towns, election to participate shall be by majority vote of the board of directors of the association.

Sec. 77. RCW 42.23.030 and 1993 c 308 s 1 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public 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 with a population of one hundred twenty-five thousand or more, 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 with a population of one hundred twenty-five thousand or more, a city ~~((of the first or second class))~~ with a population of ten thousand or more, 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 ~~((third))~~ second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total 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.150.040, 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 school district, 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 RCW 28A.330.240, that there is a shortage of substitute teachers in the school district.

Sec. 78. RCW 54.16.180 and 1991 c 363 s 135 are each amended to read as follows:

A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns: PROVIDED, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: PROVIDED FURTHER, That a district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to another public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters: PROVIDED FURTHER, That a public utility district located within a county with a population of from one hundred twenty-five thousand to less (~~that than~~) than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by said public utility district where a portion of it is located within the boundaries of such city, without approval of the voters upon such terms and conditions as the district shall determine: PROVIDED FURTHER, That a public utility district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately

or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, may provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of a sewage system within the same service area as in the judgment of the district commission is necessary or advisable in order to eliminate or avoid any existing or potential danger to the public health by reason of the lack of sewerage facilities or by reason of the inadequacy of existing facilities: AND PROVIDED FURTHER, That a public utility district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city of ~~((the third class))~~ or town with a population of less than ten thousand all or any part of a water system owned by said public utility district without approval of the voters upon such terms and conditions as the district shall determine. Public utility districts are municipal corporations for the purposes of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns.

Sec. 79. RCW 56.04.090 and 1945 c 140 s 16 are each amended to read as follows:

Any sewer district organized, or reorganized, under this title may be disincorporated in the same manner (insofar as the same is applicable) as is provided in ~~((sections 8914 to 8931, inclusive, of Remington's Revised Statutes, also Pierce's Perpetual Code 395-1 to 395-35 [RCW 35.07.010 through 35.07.220]))~~ RCW 35.07.010 through 35.07.220, for the disincorporation of the ~~((third and fourth class))~~ cities and towns, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the sewer district.

Sec. 80. RCW 57.04.100 and 1929 c 114 s 25 are each amended to read as follows:

Any water district organized under this title may be disincorporated in the same manner (insofar as the same is applicable) as is provided in RCW 35.07.010 through 35.07.220 for the disincorporation of ~~((the third and fourth class))~~ cities and towns, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the water district.

Sec. 81. RCW 57.08.010 and 1991 c 82 s 4 are each amended to read as follows:

(1)(a) A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes.

(b) A water district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of water commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby.

(c) The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities ~~((of the third class))~~ and towns, insofar as consistent with the provisions of this title, except that all assessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer are hereby imposed upon the county treasurer.

(d) A water district may construct, condemn and purchase, purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof, and any city or town therein and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer.

(e) A water district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under terms approved by the board of commissioners. Such waterworks may include facilities which result in combined water supply and electric generation, provided that the electricity generated thereby is a byproduct of the water supply system.

(f) Such electricity may be used by the water district or sold to any entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

(g) For such purposes, a water district may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake, river, or watercourse, or any underflowing water and, by means of aqueducts or pipe line conduct the same throughout such water district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district.

(h) For the purpose of constructing or laying aqueducts or pipe lines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such water district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution.

(i) For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a water district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner.

(2) A water district may purchase and take water from any municipal corporation.

(3) A water district may fix rates and charges for water supplied and may charge property owners seeking to connect to the district's water supply system, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system.

(a) For purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants.

(b) The connection charge may include interest charges applied from the date of construction of the water system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the water system, or at the time of installation of the water lines to which the property owner is seeking to connect.

(4)(a) A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Such fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer.

(b) Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule.

(5) A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

~~((6))~~ If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person.

Sec. 82. RCW 68.52.210 and 1971 c 19 s 2 are each amended to read as follows:

(1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town (~~(up to and including third class cities in all counties)~~) with a population of less than ten thousand and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: PROVIDED, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit.

Sec. 83. RCW 81.48.030 and 1973 c 115 s 3 are each amended to read as follows:

The right to fix and regulate the speed of railway trains within the limits of (~~(code cities, cities of the second class, third class, towns)~~) any city or town other than a first class city, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is vested exclusively in the commission: PROVIDED, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns.

Sec. 84. RCW 81.48.040 and 1971 ex.s. c 143 s 2 are each amended to read as follows:

After due investigation (~~(and within a reasonable time after June 9, 1943)~~), the commission shall make and issue an order fixing and regulating the speed of railway trains within the limits of cities (~~(of the second class, cities of the third class,)~~) and towns other than first class cities. The speed limit to be fixed by the commission shall be discretionary, and it may fix different rates of speed for different cities and towns, which rates of speed shall be commensurate with the hazard presented and the practical operation of the trains. The commission shall also fix and regulate the speed of railway trains at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns when in the judgment of the commission the public safety so requires; such speed limit to be fixed shall be discretionary with the commission and may be different for different grade crossings and shall be commensurate with the

hazard presented and the practical operation of trains. The commission shall have the right from time to time, as conditions change, to either increase or decrease speed limits established under RCW 81.48.030 and 81.48.040.

Sec. 85. RCW 84.52.020 and 1988 c 222 s 27 are each amended to read as follows:

It shall be the duty of the city council or other governing body of ~~((cities of the first class, except cities))~~ every city, other than a city having a population of three hundred thousand or more, ~~((the city councils or other governing bodies of cities of the second or third class,))~~ the board of directors of school districts of the first class, the superintendent of each educational service district for each constituent second class school district, commissioners of port districts, commissioners of metropolitan park districts, and of all officials or boards of taxing districts within or coextensive with any county required by law to certify to the county legislative authority, for the purpose of levying district taxes, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the city or district, through their ~~((chairman))~~ chair and clerk, or secretary, to make and file such certified budget or estimates with the clerk of the county legislative authority on or before the fifteenth day of November.

Sec. 86. RCW 84.52.070 and 1988 c 222 s 28 are each amended to read as follows:

It shall be the duty of the county legislative authority of each county, on or before the thirtieth day of November in each year, to certify to the county assessor of the county the amount of taxes levied upon the property in the county for county purposes, and the respective amounts of taxes levied by the board for each taxing district, within or coextensive with the county, for district purposes, and it shall be the duty of ~~((city councils of cities of the first class))~~ the council of each city having a population of three hundred thousand or more, and of ~~((city councils of cities of the fourth class, or towns))~~ the council of each town, and of all officials or boards of taxing districts within or coextensive with the county, authorized by law to levy taxes directly and not through the county legislative authority, on or before the thirtieth day of November in each year, to certify to the county assessor of the county the amount of taxes levied upon the property within the city, town, or district for city, town, or district purposes. If a levy amount is not certified to the county assessor by the thirtieth day of November, the county assessor shall use no more than the certified levy amount for the previous year for the taxing district: PROVIDED, That this shall not apply to the state levy or when the assessor has not certified assessed values as required by RCW 84.48.130 at least twelve working days prior to November 30th.

Sec. 87. RCW 90.28.010 and 1984 c 7 s 385 are each amended to read as follows:

The department of transportation may, in its sole discretion, grant to any person or corporation the right, privilege, and authority to perpetually back and

hold the waters of any lake, river, stream, slough, or other body of water, upon or over any state, county, or permanent highway or road, or any street or alley within the limits of any town (~~(or city of the fourth class)~~), or any part thereof, and overflow and inundate the same whenever the director of ecology deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use and shall so certify to the department of transportation. The decision of the department of transportation, in the absence of bad faith, arbitrary, capricious, or fraudulent action, is conclusive. But the right shall not be granted until it has been heretofore or is hereafter determined in a condemnation suit instituted by the person or corporation desiring to obtain the right or rights in the county wherein is situated that part of the road, highway, street, or alley so to be affected that the use for which the grant is sought is a public use, nor until there is filed with the clerk of the court in which the order or decree of public use was entered a bond or undertaking signed by the person or corporation seeking the grant, executed by a surety company authorized to do business in this state, conditioned to pay all costs and expenses of every kind and description connected with and incident to the relocation and reconstruction of any such highway, road, street, or alley, the same to be of substantially the same type and grade of construction as that of the highway, road, street, or alley to be overflowed or inundated, including any such relocation, reconstruction, and maintenance costs and expenses as may arise within a period of eighteen months after the new highway, road, street, or alley has been opened in its entirety to public travel, and also including any and all damages for which the state, county, city, or town may be liable because of the vacation of any such highway, road, street, or alley and the relocation thereof in the manner provided herein and to save harmless the state, county, city, or town from the payment of the same or any part thereof. The bond shall be in a penal sum of double the estimated amount of the expenses, costs, and damages referred to above. In the case of a state highway the estimate shall be made by the department of transportation. In case of a county road or permanent highway the estimate shall be made by the county legislative authority, and in the case of a street or alley of a town (~~(or city of the fourth class)~~) the estimate shall be made by the city or town council. The bond shall be approved by the department of transportation when the road to be affected is a state highway, and in all other cases by a judge of the superior court in which the order or decree of public use was entered. In the condemnation suit the state of Washington shall be made a party defendant when the road affected is a state highway. If the road is a county road or permanent highway the county in which the road or permanent highway is situated shall be made a party defendant, and when any street or alley in any town (~~(or city of the fourth class)~~) is affected the city or town shall be made a party defendant. Any person or corporation may acquire the right to overflow as against the owner of the fee in any such highway, road, street, or alley by making the owner of the fee or of any part thereof a party defendant in

the condemnation suit provided for herein or by instituting a separate condemnation suit against any such owner. The damages sustained by any such owner as a result of the overflow of any such highway, road, street, or alley shall be determined as in other condemnation cases, separate and apart from any damage sustained by the state, county, city, or town.

Sec. 88. RCW 90.28.020 and 1927 c 202 s 2 are each amended to read as follows:

It shall be the duty of the ~~((state highway committee))~~ department of transportation, if the road to be affected shall be a state highway, or of the ~~((board of county commissioners))~~ county legislative authority of the county in which such road is located, if the road to be affected shall be a county road, or permanent highway, or of the ~~((town))~~ council of any town ~~((or city of the fourth class))~~ in which the road is located, if the road to be affected shall be a street or alley, within thirty days after entry of said order or decree of public use and the filing of the bond mentioned in RCW 90.28.010, to enter an appropriate order or resolution directing the relocation and reestablishment and completion forthwith of such highway, road, street or alley in place of that so to be overflowed or inundated, and promptly thereafter to acquire all property and rights of way necessary therefor, instituting and diligently prosecuting such condemnation suits as may be necessary in order to secure such property and rights of way. The decision of the committee, board or council as to relocation and reestablishment set forth in such order or resolution shall be final and conclusive as to all matters and things set forth therein, including the question of public use and necessity in any and all condemnation suits to be brought under RCW 90.28.010 and 90.28.020. After the reestablishment and relocation of any such highway, road, street or alley and the construction and opening thereof in its entirety to public travel and the signing of the grant authorized in RCW 90.28.010, the state highway, county road or permanent highway, street or alley or such part thereof described in said grant shall be deemed to be abandoned and thereafter cease to be a highway, road, street or alley.

NEW SECTION. **Sec. 89.** The following acts or parts of acts are each repealed:

- (1) RCW 35.01.030 and 1965 c 7 s 35.01.030;
- (2) RCW 35.06.020 and 1965 c 7 s 35.06.020;
- (3) RCW 35.06.030 and 1965 c 7 s 35.06.030;
- (4) RCW 35.06.040 and 1965 c 7 s 35.06.040;
- (5) RCW 35.06.050 and 1965 c 7 s 35.06.050;
- (6) RCW 35.06.060 and 1965 c 7 s 35.06.060;
- (7) RCW 35.23.030 and 1965 c 7 s 35.23.030;
- (8) RCW 35.23.050 and 1965 c 7 s 35.23.050;
- (9) RCW 35.23.070 and 1965 c 7 s 35.23.070;
- (10) RCW 35.23.090 and 1965 c 7 s 35.23.090;
- (11) RCW 35.23.100 and 1965 c 7 s 35.23.100;

- (12) RCW 35.23.110 and 1965 c 7 s 35.23.110;
- (13) RCW 35.23.130 and 1965 c 7 s 35.23.130;
- (14) RCW 35.23.132 and 1965 c 7 s 35.23.132;
- (15) RCW 35.23.140 and 1965 c 7 s 35.23.140;
- (16) RCW 35.23.200 and 1965 c 7 s 35.23.200;
- (17) RCW 35.23.210 and 1965 ex.s. c 116 s 6 & 1965 c 7 s 35.23.210;
- (18) RCW 35.23.220 and 1969 ex.s. c 270 s 7 & 1965 c 7 s 35.23.220;
- (19) RCW 35.23.230 and 1965 c 7 s 35.23.230;
- (20) RCW 35.23.240 and 1965 c 7 s 35.23.240;
- (21) RCW 35.23.260 and 1965 c 7 s 35.23.260;
- (22) RCW 35.23.300 and 1965 c 7 s 35.23.300;
- (23) RCW 35.23.310 and 1988 c 168 s 2 & 1965 c 7 s 35.23.310;
- (24) RCW 35.23.320 and 1965 c 7 s 35.23.320;
- (25) RCW 35.23.370 and 1965 c 7 s 35.23.370;
- (26) RCW 35.23.450 and 1965 c 7 s 35.23.450;
- (27) RCW 35.23.500 and 1965 c 7 s 35.23.500;
- (28) RCW 35.23.510 and 1965 c 7 s 35.23.510;
- (29) RCW 35.23.540 and 1965 c 7 s 35.23.540;
- (30) RCW 35.23.550 and 1965 c 7 s 35.23.550;
- (31) RCW 35.23.595 and 1984 c 258 s 205;
- (32) RCW 35.24.010 and 1965 c 7 s 35.24.010;
- (33) RCW 35.24.030 and 1965 c 7 s 35.24.030;
- (34) RCW 35.24.060 and 1965 c 7 s 35.24.060;
- (35) RCW 35.24.274 and 1965 c 7 s 35.24.274;
- (36) RCW 35.24.275 and 1965 c 7 s 35.24.275;
- (37) RCW 35.24.290 and 1993 c 83 s 6, 1986 c 278 s 5, 1984 c 258 s 804, 1977 ex.s. c 316 s 23, 1965 ex.s. c 116 s 10, & 1965 c 7 s 35.24.290;
- (38) RCW 35.24.340 and 1965 c 7 s 35.24.340;
- (39) RCW 35.24.350 and 1973 1st ex.s. c 195 s 17 & 1965 c 7 s 35.24.350;
- (40) RCW 35.24.380 and 1965 c 7 s 35.24.380;
- (41) RCW 35.24.390 and 1965 c 7 s 35.24.390;
- (42) RCW 35.61.320 and 1965 c 7 s 35.61.320;
- (43) RCW 35.61.330 and 1965 c 7 s 35.61.330; and
- (44) RCW 35.61.340 and 1965 c 7 s 35.61.340.

NEW SECTION. Sec. 90. (1) The code reviser shall recodify the following sections as sections within chapter 35.23 RCW: RCW 35.24.020, 35.24.050, 35.24.070, 35.24.080, 35.24.090, 35.24.100, 35.24.110, 35.24.120, 35.24.130, 35.24.140, 35.24.142, 35.24.144, 35.24.146, 35.24.148, 35.24.160, 35.24.180, 35.24.190, 35.24.200, 35.24.210, 35.24.220, 35.24.250, 35.24.260, 35.24.300, 35.24.305, 35.24.306, 35.24.310, 35.24.330, 35.24.370, 35.24.400, 35.24.410, 35.24.420, 35.24.430, 35.24.440, and 35.24.455.

(2) The code reviser shall recodify the following sections within chapter 35.23 RCW with codification numbers above RCW 35.23.680: RCW 35.23.020,

35.23.040, 35.23.080, 35.23.120, 35.23.150, 35.23.160, 35.23.180, 35.23.190, 35.23.250, 35.23.280, and 35.23.530.

(3) The code reviser shall correct all statutory references to sections recodified pursuant to this section.

NEW SECTION. **Sec. 91.** Section 19 of this act shall take effect July 1, 1994.

Passed the House February 8, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 23, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 23, 1994.

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

"I am returning herewith, without my approval as to sections 2 and 73, House Bill No. 2244 entitled:

"AN ACT Relating to classifications of cities and towns;"

House Bill No. 2244 simplifies the statutes regarding the classification system for cities and towns. It also clarifies the forms of government that a noncode city may adopt upon becoming a code city. I am vetoing sections 2 and 73 of this bill because these sections of statute are repealed by other legislation enacted this session. Section 2, which amends 29.07.105 RCW, is repealed within section 53 of Substitute Senate Bill No. 6188, a bill relating to the National Voter Registration Act. Section 73, which amends 35A.29.150, is repealed within section 92 of Substitute House Bill No. 2278, a bill relating to local office vacancies. The repeal of these two sections of statute that occurs in the other pieces of legislation is a preferable approach for updating these outdated statutes.

With the exception of sections 2 and 73, House Bill No. 2244 is approved."

CHAPTER 82

[Substitute House Bill 2334]

STATE HISTORICAL SOCIETIES—PRINTING OF EDUCATIONAL PUBLICATIONS

AN ACT Relating to the educational publications of the state historical societies; amending RCW 43.78.030; and adding a new section to chapter 27.34 RCW.

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

Sec. 1. RCW 43.78.030 and 1993 c 379 s 104 are each amended to read as follows:

The public printer shall print and bind the session laws, the journals of the two houses of the legislature, all bills, resolutions, documents, and other printing and binding of either the senate or house, as the same may be ordered by the legislature; and such forms, blanks, record books, and printing and binding of every description as may be ordered by all state officers, boards, commissions, and institutions, and the supreme court, and the court of appeals and officers thereof, as the same may be ordered on requisition, from time to time, by the proper authorities. This section shall not apply to the printing of the supreme court and the court of appeals reports, to the printing of bond certificates or bond offering disclosure documents, to the printing of educational publications of the

state historical societies, or to any printing done or contracted for by institutions of higher education: PROVIDED, That institutions of higher education, in consultation with the public printer, develop vendor selection procedures comparable to those used by the public printer for contracted printing jobs. Where any institution or institution of higher learning of the state is or may become equipped with facilities for doing such work, it may do any printing: (1) For itself, or (2) for any other state institution when such printing is done as part of a course of study relative to the profession of printer. Any printing and binding of whatever description as may be needed by any institution or agency of the state department of social and health services not at Olympia, or the supreme court or the court of appeals or any officer thereof, the estimated cost of which shall not exceed one thousand dollars, may be done by any private printing company in the general vicinity within the state of Washington so ordering, if in the judgment of the officer of the agency so ordering, the saving in time and processing justifies the award to such local private printing concern.

Beginning on July 1, 1989, and on July 1 of each succeeding odd-numbered year, the dollar limit specified in this section shall be adjusted as follows: The office of financial management shall calculate such limit by adjusting the previous biennium's limit by an appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest fifty dollars.

NEW SECTION. Sec. 2. A new section is added to chapter 27.34 RCW to read as follows:

The provisions of chapter 43.78 RCW shall not apply to the printing of educational publications of the state historical societies.

Passed the House February 9, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 83

[House Bill 2338]

**UTILITIES AND TRANSPORTATION COMMISSION—INTEREST ON
DELINQUENT PAYMENTS**

AN ACT Relating to interest on delinquent payment of regulatory fees imposed by the utilities and transportation commission; amending RCW 80.24.010, 81.70.350, 81.80.321, and 81.108.090; and adding a new section to chapter 81.24 RCW.

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

Sec. 1. RCW 80.24.010 and 1990 c 48 s 1 are each amended to read as follows:

Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross

operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: **PROVIDED**, That the fee shall in no case be less than one dollar.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

NEW SECTION. Sec. 2. A new section is added to chapter 81.24 RCW to read as follows:

Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

Sec. 3. RCW 81.70.350 and 1989 c 163 s 16 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.

(3) Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

Sec. 4. RCW 81.80.321 and 1993 c 97 s 3 are each amended to read as follows:

In addition to all other fees to be paid, a common carrier and contract carrier shall pay a regulatory fee of no more than 0.0025 of its gross income from intrastate operations for the previous calendar year, or such other period as the commission designates by rule. The carrier shall pay the fee no later than four months after the end of the appropriate period and shall include with the payment such information as the commission requires by rule.

The legislature intends that the fees collected under this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject to this chapter, and to that end the commission may by general order decrease fees provided in this section if it determines that the moneys then in the motor carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating carriers.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

All fees collected under any other provision of this chapter must be paid to the commission. The commission shall transmit the fees to the state treasurer within thirty days for deposit to the credit of the public service revolving fund.

Sec. 5. RCW 81.108.090 and 1991 c 272 s 10 are each amended to read as follows:

(1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund.

(4) Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

Passed the House February 14, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 84

[House Bill 2340]

SEX OFFENDER REGISTRATION—CLARIFICATION

AN ACT Relating to sex offender registration; amending RCW 9A.44.130; and creating a new section.

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

NEW SECTION. Sec. 1. This act is intended to clarify existing law and is not intended to reflect a substantive change in the law.

Sec. 2. RCW 9A.44.130 and 1991 c 274 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision ((of the state)), as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for

a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) **SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders who move to Washington state from another state that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030.

(7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Passed the House February 8, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 85

[Substitute House Bill 2341]

NONPROFIT YOUTH ORGANIZATIONS AND LOCAL GOVERNMENT AGENCIES—PERSONAL SERVICES—PHYSICAL FITNESS CLASSES—SALES TAX EXEMPTION

AN ACT Relating to a sales tax exemption for certain personal services provided by nonprofit and government agencies; amending RCW 82.08.0291; and providing an effective date.

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

Sec. 1. RCW 82.08.0291 and 1981 c 74 s 2 are each amended to read as follows:

The tax imposed by RCW 82.08.020 shall not apply to the sale of amusement and recreation services, or personal services specified in RCW 82.04.050(3)(h), by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization; nor shall the tax apply to physical fitness classes provided by a local government.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1994.

Passed the House February 26, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 86

[Substitute House Bill 2370]

INSURANCE COMPANY ASSETS—REINSURANCE AND SURPLUS LINES
INVOLVING INCORPORATED ENTITIES

AN ACT Relating to reinsurance and surplus lines of insurance involving incorporated entities; amending RCW 48.12.160 and 48.15.090; and declaring an emergency.

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

Sec. 1. RCW 48.12.160 and 1993 c 91 s 2 are each amended to read as follows:

(1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss or claim, unearned premium, or life policy or contract reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers holding a certificate of authority to transact that kind of business in this state. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) Where the reinsurer is a group ((~~of~~)) including incorporated and unincorporated underwriters, and the group maintains a trust fund in a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, which trust fund must be in an amount equal to the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants; or

(b) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are assets of the types and amounts that are authorized under chapter 48.13 RCW and are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean, irrevocable, and unconditional letter of credit issued by a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, and issued for a term of at least one year with provisions that it must be renewed unless the bank gives notice of nonrenewal

at least thirty days before the expiration issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under (b)(i) of this subsection.

(2) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(3) A reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(4) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Sec. 2. RCW 48.15.090 and 1991 sp.s. c 5 s 2 are each amended to read as follows:

(1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker shall not so insure with:

(a) Any foreign insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds, of which not less than one million five hundred thousand dollars is capital; or

(b) Any alien insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars. Such alien insurers must have in force in the United States an irrevocable trust account, in a qualified United States financial institution, on

behalf of United States policyholders of not less than two million five hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or

(c) Any (~~unincorporated~~) group (~~of~~) including incorporated and individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or

(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of (a) of this subsection.

(2) The commissioner may, by rule:

(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve-month period, but in no case may the requirements exceed fifteen million dollars; or

(b) Prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed.

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 4, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 87

[Engrossed House Bill 2376]

SENTENCING GUIDELINES COMMISSION—DUTIES EXPANDED

AN ACT Relating to the sentencing guidelines commission; and amending RCW 9.94A.040. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.040 and 1986 c 257 s 18 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result

would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) The commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(8) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(9) The commission may (a) serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local sentencing practices; (b) develop and maintain a computerized sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (c) conduct ongoing research regarding sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the criminal justice system.

(10) The staff and executive officer of the commission may provide staffing and services to the juvenile disposition standards commission, if authorized by RCW 13.40.025 and 13.40.027. The commission may conduct joint meetings with the juvenile disposition standards commission.

(11) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW(~~as now existing or hereafter amended~~).

Passed the House February 14, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 88

[Engrossed Substitute House Bill 2388]

PREVAILING WAGE—SANCTIONS FOR MULTIPLE VIOLATIONS BY CONTRACTORS OR SUBCONTRACTORS

AN ACT Relating to penalties for multiple failures by a contractor or subcontractor to pay the prevailing rate of wage; amending RCW 39.12.065; and prescribing penalties.

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

Sec. 1. RCW 39.12.065 and 1985 c 15 s 2 are each amended to read as follows:

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held

in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.010;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.120;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this

subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

Passed the House February 9, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 89

[House Bill 2419]

LAW ENFORCEMENT MEDAL OF HONOR

AN ACT Relating to law enforcement officers who die in the line of duty; and adding a new chapter to Title 41 RCW.

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

NEW SECTION. Sec. 1. There is established a decoration of the state law enforcement medal of honor with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer who has been seriously injured or killed while in the performance of duty, or who has been distinguished by exceptionally meritorious conduct, upon nomination of the governor's state law enforcement medal of honor committee.

NEW SECTION. Sec. 2. There is created the state law enforcement medal of honor committee for nominating candidates for the award of the state law enforcement medal of honor. The committee membership consists of a representative from the governors office, the Washington state law enforcement association, the Washington state council of police officers, the Washington association of sheriffs and police chiefs, and the Washington state troopers association. The attorney general shall serve as chair of the committee and shall designate a secretary for the committee. The committee shall meet not less than semiannually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state law enforcement medal of honor,

the protocol governing the decoration, and the appurtenances necessary to the implementation of this chapter.

NEW SECTION. Sec. 3. The state law enforcement medal of honor shall be awarded to recipients during the national law enforcement recognition week. The governor may delegate the awarding of the medal to the lieutenant governor or the attorney general.

NEW SECTION. Sec. 4. The state law enforcement medal of honor may be awarded posthumously to be presented to the representative of the deceased as may be deemed appropriate by the governor or the designees specified in section 3 of this act.

NEW SECTION. Sec. 5. The decoration of the state law enforcement medal of honor shall be bronze and shall consist of a police shield overlaid by a sheriff's star with the seal of the state of Washington in the center and the words "law enforcement medal of honor" within the design and suspended from a ring attached by either a navy blue ribbon with a gold edge or a green ribbon with a gold edge. Such color choice shall be the recipient's. The reverse of the decoration shall be inscribed with the words "For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer."

NEW SECTION. Sec. 6. Sections 1 through 5 of this act shall constitute a new chapter in Title 41 RCW.

Passed the House February 8, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 90

[Substitute House Bill 2430]

MIDWIFERY JOINT UNDERWRITING ASSOCIATION—POLICY LIMITS REVISED

AN ACT Relating to making technical corrections related to the policy limits of the midwifery joint underwriting association; amending RCW 48.87.050; and declaring an emergency.

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

Sec. 1. RCW 48.87.050 and 1993 c 112 s 5 are each amended to read as follows:

A licensee may apply to the association to purchase midwifery and birth center malpractice insurance and the association shall offer a policy with liability limits of one million dollars per ~~((individual))~~ claim and three million dollars per ~~((occurrence))~~ annual aggregate, or such other minimum level of mandated coverage as determined by the department of health. The insurance commissioner shall require the use of a rating plan for midwifery malpractice insurance that permits rates to be modified according to practice volume. Any rating plan for midwifery malpractice insurance used under this section must be based on sound

actuarial principles. Coverage may not exclude midwives who engage in home birth or birth center deliveries.

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

Passed the House February 4, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 91

[Engrossed Substitute House Bill 2434]

PUBLIC WORKS BIDS—TIME LIMIT FOR SUBMISSION OF SUBCONTRACTORS' NAMES

AN ACT Relating to bidding on public works; amending RCW 39.30.060; and creating a new section.

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

Sec. 1. RCW 39.30.060 and 1993 c 378 s 1 are each amended to read as follows:

Every invitation to bid on a contract that is expected to cost in excess of one hundred thousand dollars for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010, an institution of higher education as defined under RCW 28B.10.016, or a school district shall require each bidder to submit as part of the bid, or within (~~twenty-four hours of the bid~~) one hour after the published bid submittal time, the names of the subcontractors whose subcontract amount is more than ten percent of the contract price with whom the bidder, if awarded the contract, will subcontract for performance of the categories of work designated on the list to be submitted with the bid or to indicate by naming itself that a category of work on the list shall not be subcontracted. Failure to name such subcontractors or itself shall render the bidder's bid nonresponsive and, therefore, void.

NEW SECTION. Sec. 2. This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after the effective date of this act.

Passed the House February 12, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 92

[Substitute House Bill 2438]

DEPARTMENT OF FINANCIAL INSTITUTIONS—REFERENCES CORRECTED

AN ACT Relating to technical corrections made necessary by the creation of the department of financial institutions; and amending RCW 11.102.010, 11.110.073, 19.100.010, 19.110.020, 21.30.010, 21.30.380, 30.04.010, 30.04.030, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.125, 30.04.127, 30.04.130, 30.04.180, 30.04.210, 30.04.212, 30.04.215, 30.04.220, 30.04.230, 30.04.232, 30.04.238, 30.04.240, 30.04.270, 30.04.290, 30.04.310, 30.04.405, 30.04.410, 30.04.450, 30.04.455, 30.04.465, 30.04.470, 30.04.475, 30.04.550, 30.04.560, 30.04.565, 30.04.570, 30.04.575, 30.04.900, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.070, 30.08.080, 30.08.082, 30.08.083, 30.08.084, 30.08.088, 30.08.090, 30.08.092, 30.08.095, 30.08.120, 30.08.140, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.030, 30.12.040, 30.12.042, 30.12.044, 30.12.047, 30.12.050, 30.12.060, 30.12.070, 30.12.100, 30.12.180, 30.12.240, 30.20.005, 30.20.090, 30.36.020, 30.36.030, 30.36.040, 30.40.020, 30.42.020, 30.42.030, 30.42.060, 30.42.070, 30.42.080, 30.42.090, 30.42.100, 30.42.105, 30.42.115, 30.42.120, 30.42.130, 30.42.140, 30.42.160, 30.42.210, 30.42.220, 30.42.230, 30.42.240, 30.42.250, 30.42.260, 30.42.290, 30.42.300, 30.42.310, 30.42.320, 30.42.330, 30.43.010, 30.43.020, 30.43.045, 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, 30.44.180, 30.44.190, 30.44.200, 30.44.210, 30.44.220, 30.44.230, 30.44.240, 30.44.250, 30.44.260, 30.44.270, 30.44.280, 30.46.010, 30.46.020, 30.46.030, 30.46.040, 30.46.050, 30.46.060, 30.46.070, 30.46.090, 30.46.100, 30.49.030, 30.49.040, 30.49.060, 30.49.070, 30.49.090, 30.49.100, 30.49.110, 30.49.120, 30.56.020, 30.56.030, 30.56.040, 30.56.050, 30.56.060, 30.56.080, 30.56.090, 30.60.010, 30.60.020, 30.60.030, 30.60.901, 31.04.015, 31.04.045, 31.04.055, 31.04.075, 31.04.085, 31.04.093, 31.04.105, 31.04.115, 31.04.145, 31.04.155, 31.04.165, 31.04.175, 31.04.185, 31.04.902, 31.12.005, 31.12.015, 31.12.035, 31.12.045, 31.12.055, 31.12.065, 31.12.075, 31.12.085, 31.12.095, 31.12.105, 31.12.115, 31.12.125, 31.12.136, 31.12.195, 31.12.206, 31.12.215, 31.12.306, 31.12.335, 31.12.355, 31.12.385, 31.12.406, 31.12.415, 31.12.425, 31.12.435, 31.12.445, 31.12.455, 31.12.465, 31.12.475, 31.12.506, 31.12.516, 31.12.526, 31.12.535, 31.12.545, 31.12.555, 31.12.565, 31.12.575, 31.12.585, 31.12.595, 31.12.615, 31.12.625, 31.12.635, 31.12.655, 31.12.665, 31.12.675, 31.12.685, 31.12.695, 31.12.705, 31.12.715, 31.12.725, 31.12.905, 31.12A.010, 31.12A.040, 31.12A.050, 31.12A.070, 31.12A.080, 31.12A.090, 31.12A.100, 31.12A.120, 31.12A.140, 31.13.030, 31.24.080, 31.24.120, 31.30.010, 31.30.020, 31.30.150, 31.30.160, 31.30.170, 31.30.180, 31.30.190, 31.30.200, 31.30.210, 31.30.230, 31.30.240, 31.30.250, 31.30.260, 31.30.270, 31.35.010, 31.35.020, 31.35.030, 31.35.050, 31.35.060, 31.35.070, 31.35.080, 31.35.090, 31.35.100, 31.35.900, 31.40.010, 31.40.020, 31.40.030, 31.40.050, 31.40.060, 31.40.070, 31.40.080, 31.40.090, 31.40.100, 31.40.110, 31.40.120, 31.40.130, 31.40.900, 31.45.010, 31.45.020, 31.45.030, 31.45.040, 31.45.050, 31.45.060, 31.45.070, 31.45.080, 31.45.090, 31.45.100, 31.45.110, 31.45.120, 31.45.140, 31.45.150, 31.45.160, 31.45.170, 31.45.180, 31.45.200, 31.45.900, 32.04.020, 32.04.030, 32.04.040, 32.04.050, 32.04.080, 32.04.085, 32.04.110, 32.04.211, 32.04.220, 32.04.250, 32.04.260, 32.04.280, 32.04.290, 32.04.300, 32.08.010, 32.08.020, 32.08.030, 32.08.040, 32.08.050, 32.08.060, 32.08.061, 32.08.070, 32.08.080, 32.08.090, 32.08.116, 32.08.130, 32.08.140, 32.08.210, 32.08.215, 32.08.230, 32.12.010, 32.12.020, 32.12.050, 32.12.060, 32.12.070, 32.16.020, 32.16.060, 32.16.080, 32.16.090, 32.16.093, 32.16.095, 32.16.097, 32.16.140, 32.20.035, 32.20.280, 32.20.290, 32.24.010, 32.24.020, 32.24.030, 32.24.040, 32.24.050, 32.24.060, 32.24.070, 32.24.080, 32.24.090, 32.24.100, 32.32.010, 32.32.015, 32.32.020, 32.32.025, 32.32.030, 32.32.040, 32.32.055, 32.32.060, 32.32.075, 32.32.105, 32.32.130, 32.32.150, 32.32.175, 32.32.210, 32.32.215, 32.32.220, 32.32.222, 32.32.228, 32.32.230, 32.32.235, 32.32.240, 32.32.250, 32.32.255, 32.32.265, 32.32.270, 32.32.275, 32.32.280, 32.32.285, 32.32.295, 32.32.300, 32.32.305, 32.32.310, 32.32.315, 32.32.325, 32.32.340, 32.32.345, 32.32.350, 32.32.360, 32.32.370, 32.32.375, 32.32.395, 32.32.400, 32.32.410, 32.32.415, 32.32.420, 32.32.425, 32.32.430, 32.32.450, 32.32.455, 32.32.465, 32.32.470, 32.32.475, 32.32.485, 32.32.490, 32.32.495, 32.32.500, 32.32.525, 32.34.010, 32.34.020, 32.34.040, 32.34.050, 32.40.010, 32.40.020, 32.40.030, 33.04.002, 33.04.005, 33.04.010, 33.04.020, 33.04.025, 33.04.030, 33.04.042, 33.04.044, 33.04.048, 33.04.052, 33.04.054, 33.04.060, 33.04.110, 33.08.010, 33.08.050, 33.08.055, 33.08.060, 33.08.070, 33.08.080, 33.08.090, 33.08.100, 33.08.110, 33.12.010, 33.12.014, 33.12.060, 33.12.140, 33.16.040, 33.16.120, 33.16.130, 33.20.130, 33.20.150, 33.20.170, 33.24.010, 33.24.025, 33.24.360, 33.24.370, 33.28.020, 33.32.020, 33.32.030, 33.32.050, 33.36.060, 33.40.010, 33.40.020, 33.40.030, 33.40.040, 33.40.050, 33.40.070, 33.40.075, 33.40.080, 33.40.110, 33.40.120, 33.40.130, 33.40.150, 33.43.010, 33.44.020, 33.44.090, 33.44.125, 33.44.130, 33.46.020, 33.46.030, 33.46.040, 33.46.050, 33.46.060, 33.46.080, 33.46.130, 33.48.100, 33.48.110, 33.48.130, 33.48.150, 33.48.160, 33.48.170, 33.48.180, 33.48.190, 33.48.200, 33.48.210, 33.48.230,

33.48.240, 33.48.250, 33.48.260, 33.48.280, 33.48.320, 39.58.010, 43.19.015, 43.24.020, 43.24.024, 43.163.010, 43.163.110, 46.01.011, 46.01.050, 48.18A.060, 48.18A.070, 58.19.030, and 70.37.020.

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

Sec. 1. RCW 11.102.010 and 1985 c 30 s 79 are each amended to read as follows:

Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: **PROVIDED**, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such common trust fund, comply with the rules and regulations as made from time to time by the ~~((supervisor of banking))~~ director of financial institutions in the state where chartered and in Washington the ~~((supervisor))~~ director is hereby authorized and empowered to make such rules and regulations as he or she may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company.

Sec. 2. RCW 11.110.073 and 1985 c 30 s 119 are each amended to read as follows:

The following trustees shall be exempt from the provisions of RCW 11.110.070, but shall file the information required in RCW 11.110.060:

(1) A bank or trust company subject to examination by the ~~((supervisor of banking))~~ director of financial institutions of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system; which such bank or trust company is acting as trustee, executor or court-appointed fiduciary: **PROVIDED**, That a bank or trust company which is a co-fiduciary of a trust shall be deemed to be the sole fiduciary of such trust under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for

preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially formed as a trustee pursuant to or in connection with the terms of a charitable trust.

Sec. 3. RCW 19.100.010 and 1991 c 226 s 1 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(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 a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(3) "Director" means the director of ~~((licensing))~~ financial institutions.

(4) "Franchise" means:

(a) An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(b) The following shall not be construed as a franchise within the meaning of this chapter:

(i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

(a) Price specifications, special pricing systems or discount plans;

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;
(d) Promotional or advertising materials or cooperative advertising;
(e) Training regarding the promotion, operation, or management of the business; or

(f) Operational, managerial, technical, or financial guidelines or assistance.

(6) "Bank credit card plan" means a credit card plan in which the issuer of credit cards is a national bank, state bank, trust company or any other banking institution subject to the supervision of the ~~((supervisor of banking))~~ director of financial institutions of this state or any parent or subsidiary of such bank.

(7) "Franchisee" means a person to whom a franchise is offered or granted.

(8) "Franchisor" means a person who grants a franchise to another person.

(9) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(10) "Subfranchisor" means a person to whom a subfranchise is granted.

(11) "Franchise broker" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

(12) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(13) "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.

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

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

(16) "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.

Sec. 4. RCW 19.110.020 and 1981 c 155 s 2 are each amended to read as follows:

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

(1) "Business opportunity" means the sale or lease of any product, equipment, supply, or service which is sold or leased to enable the purchaser to start a business; and:

(a) The seller represents that the seller will provide locations or assist the purchaser in finding locations, on premises neither owned nor leased by the purchaser or seller, for the use or operation of vending machines, display racks, cases, or similar devices or coin-operated amusement machines or similar devices; or

(b) The seller represents that the seller will purchase any product made, produced, fabricated, assembled, modified, grown, or bred by the purchaser using, in whole or part, any product, equipment, supply, or service sold or leased to the purchaser by the seller; or

(c) The seller guarantees that the purchaser will earn an income greater than or equal to the price paid for the business opportunity; or

(d) The seller represents that if the purchaser pays a fee exceeding three hundred dollars directly or indirectly for the purpose of the seller providing a sales or marketing program, the seller will provide such a program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

(2) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

(3) "Seller" means a person who sells or leases a business opportunity.

(4) "Purchaser" means a person who buys or leases a business opportunity.

(5) "Director" means the director of ~~((the department of licensing))~~ financial institutions.

(6) "Guarantee" means an undertaking by the seller to refund all or a portion of the purchase price paid for the business opportunity.

Sec. 5. RCW 21.30.010 and 1987 c 243 s 2 are each amended to read as follows:

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

(1) "Administrator" means the person designated by the director in accordance with the provisions of RCW 21.20.460.

(2) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(3) "Director" means the director of ~~((the department of licensing))~~ financial institutions.

(4) "Commodity broker-dealer" means, for the purposes of registration in accordance with this chapter, any person engaged in the business of making offers, sales, or purchases of commodities under commodity contracts or under commodity options.

(5) "Commodity sales representative" means, for the purposes of registration in accordance with this chapter, any person authorized to act and acting for a commodity broker-dealer in effecting or attempting to effect a transaction in a commodity contract or commodity option.

(6) "Commodity exchange act" means the act of congress known as the commodity exchange act, as amended, codified at 7 U.S.C. Sec. 1 et seq.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the commodity exchange act.

(8) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on October 1, 1986, and all subsequent amendments, additions, or other revisions thereto, unless the administrator, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof by rule or order.

(9) "Commodity" means, except as otherwise specified by the director by rule or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal set forth in subsection (17) of this section), any gem or gemstone (whether characterized as precious, semiprecious, or otherwise), any fuel (whether liquid, gaseous, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. However, the term commodity does not include (a) a numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains, (b) real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property, or (c) any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner thereof.

(10) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by

the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(11) "Commodity option" means any account, agreement, or contract giving a party thereto the right to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include a commodity option traded on a national securities exchange registered with the United States securities and exchange commission.

(12) "Commodity merchant" means any of the following, as defined or described in the commodity exchange act or by CFTC rule:

- (a) Futures commission merchant;
- (b) Commodity pool operator;
- (c) Commodity trading advisor;
- (d) Introducing broker;
- (e) Leverage transaction merchant;
- (f) An associated person of any of the foregoing;
- (g) Floor broker; and

(h) Any other person (other than a futures association) required to register with the commodity futures trading commission.

(13) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(14) "Offer" or "offer to sell" includes every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase, or to acquire, for value.

(15) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the United States securities and exchange commission (or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(17) "Precious metal" means:

- (a) Silver, in either coin, bullion, or other form;
- (b) Gold, in either coin, bullion, or other form;

- (c) Platinum, in either coin, bullion, or other form; and
- (d) Such other items as the director may specify by rule or order.

Sec. 6. RCW 21.30.380 and 1986 c 14 s 39 are each amended to read as follows:

The administration of this chapter shall be under the director of the department of ~~((licensing))~~ financial institutions.

Sec. 7. RCW 30.04.010 and 1959 c 106 s 1 are each amended to read as follows:

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

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

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

"Branch bank" means any office of deposit or discount maintained by any bank or trust company, domestic or otherwise, other than its principal place of business, regardless of whether it be in the same city or locality.

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

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

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

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

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

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

~~((Supervisor means the state supervisor of banking))~~ "Director" means the director of financial institutions.

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

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

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

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

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

Sec. 8. RCW 30.04.030 and 1986 c 279 s 1 are each amended to read as follows:

The ~~((supervisor))~~ director shall have power to adopt uniform rules ~~((and regulations))~~ in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of banks and trust companies and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. ~~((He))~~ The director shall mail a copy of the rules ~~((and regulations))~~ to each bank and trust company at its principal place of business.

The ~~((supervisor))~~ director shall have the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of financial services to the citizens of the state of Washington by the banks and trust companies subject to this title.

Sec. 9. RCW 30.04.060 and 1989 c 180 s 1 are each amended to read as follows:

(1) The ~~((supervisor, the deputy supervisor, or a bank examiner))~~ director, assistant director, or an examiner 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))~~ director 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))~~ director 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)) director 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)) director 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)) director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The ((supervisor)) director 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. 10. RCW 30.04.070 and 1955 c 33 s 30.04.070 are each amended to read as follows:

The ((supervisor)) director shall collect from each bank, mutual savings bank, trust company or industrial loan company for each examination of its condition the estimated actual cost of such examination.

Sec. 11. RCW 30.04.075 and 1989 c 180 s 2 are each amended to read as follows:

(1) All examination reports and all information obtained by the ((supervisor)) director and the ((supervisor's)) director's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the ((supervisor)) director and the ((supervisor's)) director's staff from other state or federal bank regulatory authorities with whom the ((supervisor)) director has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the ((supervisor)) director and the ((supervisor's)) director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the ((supervisor)) director may furnish all or any part of examination reports prepared by the ((supervisor's)) director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the ((supervisor)) director has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of

accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the ~~((supervisor))~~ director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the ~~((supervisor))~~ director furnishes any examination report to officials empowered to investigate criminal charges, the ~~((supervisor))~~ director may only furnish that part of the report which is necessary and pertinent to the investigation, and the ~~((supervisor))~~ director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the ~~((supervisor))~~ director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the ~~((division of banking))~~ department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the ~~((division of banking))~~ department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the ~~((supervisor))~~ director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the ~~((supervisor))~~ director has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.17 RCW.

(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))~~ director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the ~~((supervisor))~~ director.

(7) This section shall not apply to investigation reports prepared by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the ~~((supervisor))~~ director may adopt rules making confidential portions of the reports if in the ~~((supervisor's))~~ director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the ~~((supervisor))~~ director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 12. RCW 30.04.111 and 1986 c 279 s 3 are each amended to read as follows:

The total loans and extensions of credit by a bank or trust company to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank or trust company. The following loans and extensions of credit shall not be subject to this limitation:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse;

(2) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States;

(3) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(4) Loans or extensions of credit fully secured by a segregated deposit account or accounts in the lending bank;

(5) Loans or extensions of credit secured by collateral having a readily ascertained market value of at least one hundred fifteen percent of the outstanding amount of the loan or extension of credit;

(6) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples;

(7) The purchase of bankers' acceptances of the kind described in section 13 of the federal reserve act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(8) The unpaid purchase price of a sale of bank property, if secured by such property.

For the purposes of this section "capital" shall include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

For the purposes of this section "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and amounts transferred to surplus from undivided profits pursuant to resolution of the board of directors.

The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

The ~~((supervisor))~~ director may prescribe rules to administer and carry out the purposes of this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit, and to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person.

Sec. 13. RCW 30.04.120 and 1986 c 279 s 4 are each amended to read as follows:

The shares of stock of every bank and trust company shall be deemed personal property. No such corporation shall hereafter make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition.

Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by any such bank or trust company for its own account of any shares of stock of any corporation, except a federal reserve bank of which such corporation shall become a member, and then only to the extent required by such federal reserve bank: PROVIDED, That any bank or trust company may purchase, acquire and hold shares of stock in any other corporation which shares have been previously pledged as security to any loan or discount made in good faith and such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith and stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within two years from the time of its purchase or acquisition. Any time limit imposed in this section may be extended by the (~~supervisor~~) director upon cause shown. Banks and trust companies are authorized to make loans on the security of the capital stock of a bank or trust company other than the lending corporation.

Sec. 14. RCW 30.04.125 and 1986 c 279 s 5 are each amended to read as follows:

Unless otherwise prohibited by law, any state bank or trust company may invest in the capital stock of corporations organized to conduct the following businesses:

(1) A safe deposit business: PROVIDED, That the amount of investment does not exceed fifteen percent of its capital stock and surplus;

(2) A corporation holding the premises of the bank or its branches: PROVIDED, That without the approval of the (~~supervisor~~) director, the investment of such stock shall not exceed, together with all loans made to the corporation by the bank, a sum equal to the amount permitted to be invested in the premises by RCW 30.04.210;

(3) Stock in a small business investment company licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed five percent of its capital and surplus;

(4) Capital stock of a banking service corporation or corporations. The total amount that a bank may invest in the shares of such corporation may not exceed ten percent of its capital and surplus. A bank service corporation may not engage in any activity other than those permitted by the bank service corporation act, 12 U.S.C. Sec. 1861, et seq., as subsequently amended and in effect on June 11, 1986. The performance of any service, and any records maintained by any such corporation for a bank, shall be subject to regulation and examination by the (~~supervisor~~) director and appropriate federal agencies to the same extent as if the services or records were being performed or maintained by the bank on its own premises;

(5) Capital stock of a federal reserve bank to the extent required by such federal reserve bank;

(6) A corporation engaging in business activities that have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking, as of June 11, 1986;

(7) A governmentally sponsored corporation engaged in secondary marketing of loans and the stock of which must be owned in order to participate in its marketing activities;

(8) A corporation in which all of the voting stock is owned by the bank and that engages exclusively in nondeposit-taking activities that are authorized to be engaged in by the bank or trust company.

Sec. 15. RCW 30.04.127 and 1987 c 498 s 1 are each amended to read as follows:

(1) A bank or trust company, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the bank or trust company's business. The aggregate amount of funds invested, or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets or fifty percent of the net worth, whichever is less, of the bank or trust company. For purposes of this subsection, "net worth" means the aggregate of capital, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors.

(2) A bank or trust company may engage in an activity permitted under this section only with the prior authorization of the ~~((supervisor))~~ director. In approving or denying a proposed activity, the ~~((supervisor))~~ director shall consider the financial and management strength of the institution, the convenience and needs of the public, and whether the proposed activity should be conducted through a subsidiary or affiliate of the bank. The ~~((supervisor))~~ director may not authorize under this section and no bank or trust company may act as an insurance or travel agent unless otherwise authorized by state statute.

Sec. 16. RCW 30.04.130 and 1986 c 279 s 6 are each amended to read as follows:

Any debt due a bank or trust company on which interest is one year or more past due and unpaid, unless such debt be well secured and in the course of collection by legal process or probate proceedings, or unless such debt be represented by or secured by bonds or other collateral having a readily ascertainable market value shall be considered a bad debt, and shall be charged off of the books of such corporation. Such assets shall be carried on the books of such corporation at such value as the ~~((supervisor))~~ director may from time to time direct, but in no event shall such carrying value exceed the market value thereof. A judgment held by a bank or trust company shall not be considered an asset of the corporation after two years from the date of its rendition unless with the written permission of the ~~((supervisor))~~ director specifying an additional period: PROVIDED, That time consumed by any appeal shall be excluded.

All assets or portion thereof that the ((~~supervisor~~)) director may have required a bank or trust company to charge off shall be charged off. No bank or trust company shall enter or at any time carry on its books any of its assets at a valuation exceeding the actual cost. However, accreting the discount on securities is permitted on a pro rata basis, over the life of the security.

Sec. 17. RCW 30.04.180 and 1986 c 279 s 8 are each amended to read as follows:

No bank or trust company shall declare or pay any dividend to an amount greater than its net profits then on hand.

The board of directors of any bank or trust company may declare a dividend out of so much of the undivided profits of such bank or trust company as they shall judge expedient: PROVIDED, HOWEVER, That before any such dividend is declared or the net profits in any way disposed of, not less than one-tenth of such net profits shall be carried to a surplus fund until the amount in such surplus fund shall be equal to twenty-five percent of the paid-in common stock of such bank or trust company: PROVIDED, FURTHER, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such bank and trust company out of its net profits for such period or periods shall be deemed to be additions to its surplus fund if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then properly be carried to surplus. In any such case the bank and trust company shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired: PROVIDED FURTHER, That the ((~~supervisor~~)) director shall in his or her discretion have the power to require any bank or trust company to suspend the payment of any and all dividends until all requirements that may have been made by the ((~~supervisor~~)) director shall have been complied with; and upon such notice to suspend dividends no bank or trust company shall thereafter declare or pay any dividends until such notice has been rescinded in writing. A dividend is payable in property or capital stock.

Sec. 18. RCW 30.04.210 and 1986 c 279 s 9 are each amended to read as follows:

A bank or trust company may purchase, hold, and convey real estate for the following purposes:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same building to rent as a source of income: PROVIDED, That any bank or trust company shall not invest for such purposes more than the greater of: (a) Fifty percent of its capital, surplus, and undivided profits; or (b) one hundred twenty-five percent of its capital stock without the approval of the ((~~supervisor~~)) director.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, from debts owed to it.

(4) Such as a trust company receives in trust or acquires pursuant to the terms or authority of any trust.

(5) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(6) Such as shall be purchased, held, or conveyed in accordance with RCW 30.04.212 granting banks the power to invest directly or indirectly in unimproved or improved real estate.

No real estate specified in subdivision (4) shall be considered an asset of the bank or trust company holding the same in trust nor shall any real estate except that specified in subdivision (1) be carried as an asset on the bank's or trust company's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be granted by the ~~((supervisor))~~ director.

Sec. 19. RCW 30.04.212 and 1985 c 329 s 5 are each amended to read as follows:

(1) In addition to the powers granted under RCW 30.04.210 and subject to the limitations and restrictions contained in this section and in RCW 30.60.010 and 30.60.020, a bank:

(a) May acquire any interest in unimproved or improved real property;

(b) May construct, alter, and manage improvements of any description on real estate in which it holds a substantial equity interest.

(2) The powers granted under subsection (1) of this section do not include, and a bank may not:

(a) Manage any real property in which the bank does not own a substantial equity interest;

(b) Engage in activities of selling, leasing, or otherwise dealing in real property as an agent or broker; or

(c) Acquire any equity interest in any one to four-family dwelling that is used as a principal residence by the owner of the dwelling; however, this shall not prohibit a bank from making loans secured by such dwelling where all or part of the bank's anticipated compensation results from the appreciation and sale of such dwelling.

(3) The aggregate amount of funds invested under this section shall not exceed two percent of a bank's capital, surplus, and undivided profits. Such percentage amount shall be increased based upon the most recent community reinvestment rating assigned to a bank by the ~~((supervisor))~~ director in accordance with RCW 30.60.010, as follows:

- | | |
|-------------------------------|-----------------|
| (a) Excellent performance: | Increase to 10% |
| (b) Good performance: | Increase to 8% |
| (c) Satisfactory performance: | Increase to 6% |
| (d) Inadequate performance: | Increase to 3% |
| (e) Poor performance: | No increase |

(4) For purposes of this section only, each bank will be deemed to have been assigned a community reinvestment rating of "1" for the period beginning with January 1, 1986, and ending December 31, 1986. Thereafter, each bank will be assigned an annual rating in accordance with RCW 30.60.010, which rating shall remain in effect for the next succeeding year and until the (~~supervisor~~) director has conducted a new investigation and assigned a new rating for the next succeeding year, the process repeating on an annual basis.

(5) No bank may at any time be required to dispose of any investment made in accordance with this section due to the fact that the bank is not then authorized to acquire such investment, if such investment was lawfully acquired by the bank at the time of acquisition.

(6) The (~~supervisor~~) director shall limit the amount that may be invested in a single project or investment and may adopt any rule necessary to the safe and sound exercise of powers granted by this section.

Sec. 20. RCW 30.04.215 and 1986 c 279 s 10 are each amended to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. At least thirty days before investment in corporations or other entities under this chapter, notification by letter shall be made to the (~~supervisor~~) director in accordance with such terms and conditions as the (~~supervisor~~) director might establish by rule.

(2) A bank that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the (~~supervisor~~) director for authorization to conduct such activity. Within thirty days of the receipt of this application, the (~~supervisor~~) director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank and whether the applicant is capable of performing such an activity. If the (~~supervisor~~) director finds the activity to be closely related to the business of banking and the bank is otherwise qualified, (~~he~~) the director shall forthwith inform the applicant that the activity is authorized. If the (~~supervisor~~) director determines that such activity is not closely related to the business of banking or the bank is not otherwise qualified, (~~he~~) the director shall forthwith inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the (~~supervisor~~) director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank

holding companies, and the activities performed by other commercial banks or their holding companies. Any activity which may be performed by a bank, except the taking of deposits, may be performed by a corporation, all of the outstanding stock of which is owned by the bank.

(3) In addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that are determined by the ~~((supervisor))~~ director, by ~~((regulation))~~ rule adopted pursuant to chapter 34.05 RCW, to be closely related to the business of banking, or necessary or convenient thereto, and the exercise thereof will promote the public convenience and advantage. Provided, however, that such other business activities shall also have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking.

Sec. 21. RCW 30.04.220 and 1955 c 33 s 30.04.220 are each amended to read as follows:

Every corporation, which on March 10, 1917, was actually and publicly engaged in banking or trust business in this state in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, may, if it otherwise complies with the provisions of this title, continue its said business, subject to the terms and regulations hereof and without amending its articles of incorporation, although its name and the amount of its capital stock, the number or length of terms of its directors or the form of its articles of incorporation do not comply with the requirements of this title: PROVIDED,

(1) That any such bank, which was by the ~~((supervisor))~~ director lawfully permitted to operate, although its capital stock was not fully paid in, shall pay in the balance of its capital stock at such times and in such amounts as the ~~((supervisor))~~ director may require;

(2) That, except with written permission of the ~~((supervisor))~~ director, any bank or trust company which shall amend its articles of incorporation must in such event comply with all the requirements of this title.

Sec. 22. RCW 30.04.230 and 1987 c 420 s 2 are each amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the ~~((supervisor of banking))~~ director. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the ~~((supervisor of banking))~~ director. The ~~((supervisor))~~ director shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the ~~((supervisor of banking))~~ director may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the ~~((supervisor))~~ director and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the ~~((supervisor))~~ director as arbitrary and capricious or unlawful.

(b) The ~~((supervisor of banking))~~ director shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the ~~((supervisor))~~ director shall be guided by the criteria

developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the ~~((supervisor))~~ director in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The ~~((supervisor))~~ director shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

Sec. 23. RCW 30.04.232 and 1985 c 310 s 1 are each amended to read as follows:

(1) In addition to an acquisition pursuant to RCW 30.04.230, an out-of-state bank holding company may acquire more than five percent of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association, the principal operations of which are conducted within this state, if the following terms or conditions are fulfilled:

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

(b) The laws of the state in which the out-of-state bank holding company principally conducts its operations permit a domestic bank holding company to acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association, the principal operations of which are conducted within that state, and permit the operation of the acquired bank, trust company, or national banking association within that state on terms and conditions no less favorable than other banks, trust companies, or national banking associations doing a banking business within that state;

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

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

Sec. 24. RCW 30.04.238 and 1986 c 279 s 12 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a bank, with the prior approval of the ~~((supervisor))~~ director, may purchase shares of its own capital stock.

(2) When a bank purchases such shares, its capital accounts shall be reduced appropriately. The shares shall be held as authorized but unissued shares.

Sec. 25. RCW 30.04.240 and 1979 c 45 s 1 are each amended to read as follows:

(1) Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section. Any person connected with a bank or trust company who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation shall be guilty of a felony.

(2) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust

company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the ~~((supervisor of banking))~~ director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, national bank, or trust company in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Sec. 26. RCW 30.04.270 and 1955 c 33 s 30.04.270 are each amended to read as follows:

Each official communication, directed by the ~~((supervisor))~~ director or by one of his ~~((deputies))~~ or her assistants to any bank, trust company, mutual savings bank or industrial loan company or to any officer thereof relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations relative to the conduct of the business of the bank, trust company, mutual savings bank or industrial loan company shall be submitted by the officer receiving it to the board of directors at the next meeting of such board and shall be duly noted in the minutes of the meeting of such board.

Sec. 27. RCW 30.04.290 and 1973 1st ex.s. c 53 s 36 are each amended to read as follows:

A foreign corporation, whose name contains the words "bank," "banker," "banking," or "trust," or whose articles of incorporation empower it to do a banking or trust business and which desires to engage in the business of loaning money on mortgage securities or in buying and selling exchange, coin, bullion or securities in this state may do so, but only upon filing with the ~~((supervisor))~~ director and with the secretary of state a certified copy of a resolution of its governing board to the effect that it will not engage in banking or trust business in this state, which copy shall be duly attested by its president and secretary. Such corporation shall also comply with the general corporation laws of this state

relating to foreign corporations doing business herein. Nothing herein shall prevent operations by an alien bank in this state in conformance with chapter 30.42 RCW, RCW 30.04.290 and 30.40.020; nor after July 16, 1973 authorize the transaction of business in this state by an alien bank in any manner except in accordance with the provisions of chapter 30.42 RCW, RCW 30.04.290 and 30.40.020.

Sec. 28. RCW 30.04.310 and 1988 c 25 s 1 are each amended to read as follows:

Every bank or trust company which violates or fails to comply with any provision of chapters 30.04 through 30.22, 30.44, and 11.100 RCW or any lawful direction or requirement of the ((~~supervisor~~)) director shall be subject, in addition to any penalty now provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense.

Sec. 29. RCW 30.04.405 and 1986 c 279 s 15 are each amended to read as follows:

(1) It is unlawful for any person to acquire control of a bank until thirty days after filing with the ((~~supervisor~~)) director a copy of the notice of change of control required to be filed with the federal deposit insurance corporation or a completed application. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the ((~~supervisor~~)) director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(a) The identity, banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) 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;

(e) 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 for management;

(f) 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; and

(g) 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.

(2) Notwithstanding any other provision of this section, a bank or domestic bank holding company as defined in RCW 30.04.230 need only notify the ((~~supervisor~~)) director 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.

(3) When a person, other than an individual or corporation, is required to file an application under this section, the ((~~supervisor~~)) director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person, as defined in RCW 30.04.400(3), who has an interest in or controls a person filing an application under this subsection.

(4) When a corporation is required to file an application under this section, the ((~~supervisor~~)) director may require that information required by subsection (1)(a), (b), and (f) of this section 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.

(5) 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~~)) director in lieu of the requirements of this section.

(6) Any acquiring party shall also deliver a copy of any notice or application required by this section to the bank proposed to be acquired within two days after the notice or application is filed with the ((~~supervisor~~)) director.

(7) Any acquisition of control in violation of this section shall be ineffective and void.

(8) Any person who willfully or intentionally violates this section or any rule adopted pursuant thereto 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.

Sec. 30. RCW 30.04.410 and 1989 c 180 s 3 are each amended to read as follows:

(1) The ((~~supervisor~~)) director may disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the ((supervisor)) director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the ((supervisor)) director issues written notice of intent not to disapprove the action.

(3) The ((supervisor)) director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW 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)) director any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors.

Sec. 31. RCW 30.04.450 and 1977 ex.s. c 178 s 1 are each amended to read as follows:

(1) The ((supervisor)) director may issue and serve upon a bank or trust company a notice of charges if in the opinion of the ((supervisor)) director any bank or trust company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the bank or trust company;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the ((supervisor)) director in connection with the granting of any application or other request by the bank or trust company or any written agreement made with the ((supervisor)) director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place

at which a hearing will be held to determine whether an order to cease and desist should issue against the bank or trust company. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the ((supervisor)) director at the request of the bank or trust company.

Unless the bank or trust company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ((supervisor)) director finds that any violation or practice specified in the notice of charges has been established, the ((supervisor)) director may issue and serve upon the bank or trust company an order to cease and desist from the violation or practice. The order may require the bank or trust company and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank or trust company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the ((supervisor)) director or a reviewing court.

Sec. 32. RCW 30.04.455 and 1977 ex.s. c 178 s 2 are each amended to read as follows:

Whenever the ((supervisor)) director determines that the acts specified in RCW 30.04.450 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the ((supervisor)) director may also issue a temporary order requiring the bank or trust company to cease and desist from the violation or practice. The order shall become effective upon service on the bank or trust company and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 30.04.460 pending the completion of the administrative proceedings under the notice and until such time as the ((supervisor)) director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank or trust company under RCW 30.04.450.

Sec. 33. RCW 30.04.465 and 1977 ex.s. c 178 s 4 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 30.04.455, the ((supervisor)) director may apply to the superior court of the county of the principal place of business of the bank or trust company for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 34. RCW 30.04.470 and 1977 ex.s. c 178 s 8 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 30.04.450 or 30.12.042 may be held at such place as is designated by the ~~((supervisor))~~ director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the ~~((supervisor))~~ director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the ~~((supervisor))~~ director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 30.04.450 or 30.12.042, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank or trust company under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the ~~((supervisor))~~ director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the ~~((supervisor))~~ director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank or trust company within ten days after the date of service of the order a written petition praying that the order of the ~~((supervisor))~~ director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the ~~((supervisor))~~ director and the ~~((supervisor))~~ director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the ~~((supervisor))~~ director except that the ~~((supervisor))~~ director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the ~~((supervisor))~~ director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 30.04.450, 30.04.455, 30.12.040 or 30.12.042 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

Sec. 35. RCW 30.04.475 and 1977 ex.s. c 178 s 9 are each amended to read as follows:

The ~~((supervisor))~~ director may apply to the superior court of the county of the principal place of business of the bank or trust company affected for the enforcement of any effective and outstanding order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 30.04.460 and 30.04.470.

Sec. 36. RCW 30.04.550 and 1986 c 279 s 40 are each amended to read as follows:

A state banking corporation may, with the approval of the ~~((supervisor of banking))~~ director and the affirmative vote of the shareholders of such corporation owning at least two-thirds of each class of shares entitled to vote under the terms of such shares, be reorganized to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company, as defined in the federal bank holding company act of 1956, as amended.

Sec. 37. RCW 30.04.560 and 1986 c 279 s 42 are each amended to read as follows:

If the shareholders approve the reorganization by a two-thirds vote of each class of shares entitled to vote under the terms of such shares, and if it is thereafter approved by the ~~((supervisor))~~ director and consummated, any shareholder of the banking corporation who has voted shares against such reorganization at such meeting or has given notice in writing at or prior to such meeting to the banking corporation that he or she dissents from the plan of reorganization and has not voted in favor of the reorganization, shall be entitled to receive the value of the shares determined as provided in RCW 30.04.565. Such dissenter's rights must be exercised by making written demand which shall be delivered to the corporation at any time within thirty days after the date of shareholder approval, accompanied by the surrender of the appropriate stock certificates.

Sec. 38. RCW 30.04.565 and 1982 c 196 s 4 are each amended to read as follows:

The value of the shares of a dissenting shareholder who has properly perfected dissenter's rights shall be ascertained as of the day prior to the date of the shareholder action approving such reorganization by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the acquiring bank holding company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the effective date of the

reorganization, the ~~((supervisor of banking))~~ director shall cause an appraisal to be made which shall be final and binding upon all parties.

Sec. 39. RCW 30.04.570 and 1982 c 196 s 5 are each amended to read as follows:

The reorganization and exchange authorized by RCW 30.04.550 through 30.04.570 shall become effective as follows:

(1) If the board of directors and shareholders of the state banking corporation and the board of directors of the acquiring corporation approve the plan of reorganization, then both corporations shall apply for the approval of the ~~((supervisor of banking))~~ director, providing such information as the ~~((supervisor))~~ director by ~~((regulation))~~ rule may prescribe.

(2) If the ~~((supervisor))~~ director approves the reorganization, the ~~((supervisor))~~ director shall issue a certificate of reorganization to the state banking corporation.

(3) Upon the issuance of a certificate of reorganization by the ~~((supervisor))~~ director, or on such later date as shall be provided for in the plan of reorganization, the shares of the state banking corporation shall be deemed to be exchanged in accordance with the plan of reorganization, subject to the rights of dissenters under RCW 30.04.560 and 30.04.565.

Sec. 40. RCW 30.04.575 and 1986 c 279 s 44 are each amended to read as follows:

Prior to the approval of the reorganization, the ~~((supervisor))~~ director, upon request of the board of directors of the bank, or not less than ten percent of its shareholders, shall hold a public hearing at which bank shareholders and other interested parties may appear. Notice of the public hearing shall be sent to each shareholder and otherwise publicized in accordance with the administrative procedure act, chapter 34.05 RCW.

The approval of the reorganization by the ~~((supervisor of banking))~~ director shall be conditioned on a finding that the terms of the reorganization are fair to the shareholders and other interested parties.

Sec. 41. RCW 30.04.900 and 1987 c 498 s 2 are each amended to read as follows:

(1) The director ~~((of general administration))~~ shall study the financial institution structure in the state and report to the governor and the appropriate standing committees of the house of representatives and the senate on changes which should be made to enable state chartered financial institutions to remain safe and sound and yet be competitive with other federally chartered and nonchartered financial institutions. In conducting the study the director shall consider:

(a) The powers which financial institutions under state regulatory authority should be entitled to exercise;

(b) The level of supervision that is necessary to assure safe and sound financial institutions without unnecessarily restricting the operation of the institutions;

(c) Whether the distinction among commercial banks, savings banks, and savings and loan associations should be retained, and if so, whether there should continue to be differences in their powers;

(d) The general corporate powers that should be authorized for financial institutions; and

(e) Any other matters deemed by the director to be relevant.

(2) The director, in conducting the study required by subsection (1) of this section shall consult with ~~((the supervisor of banking, with the supervisor of savings and loans and with))~~ representatives from all types of financial institutions, including large and small, urban and rural, commercial banks, savings banks, and savings and loan associations and credit unions. The director shall also advise the appropriate standing committees of the house of representatives and the senate of all meetings held to consider the study conducted under this section.

(3) The director shall submit the report required by subsection (1) of this section not later than November 1, 1987.

Sec. 42. RCW 30.08.010 and 1986 c 279 s 17 are each amended to read as follows:

When authorized by the ~~((supervisor))~~ director, as hereinafter provided, five or more natural persons, citizens of the United States, may incorporate a bank or trust company in the manner herein prescribed. No bank or trust company shall incorporate for less amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the ~~((supervisor))~~ director after consideration of the proposed location, management, and the population and economic characteristics for the area, the nature of the proposed activities and operation of the bank or trust company, and other factors deemed pertinent by the ~~((supervisor))~~ director. Each bank and trust company shall before commencing business have subscribed and paid into it in the same manner as is required for capital stock, an amount equal to at least ten percent of the capital stock above required, that shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders.

Sec. 43. RCW 30.08.020 and 1986 c 279 s 18 are each amended to read as follows:

Persons desiring to incorporate a bank or trust company shall file with the ~~((supervisor))~~ director a notice of their intention to organize a bank or trust company in such form and containing such information as the ~~((supervisor))~~ director shall prescribe by ~~((regulation))~~ rule, together with proposed articles of

incorporation, which shall be submitted for examination to the ~~((supervisor))~~ director at his or her office in Olympia.

The proposed articles of incorporation shall state:

- (1) The name of such bank or trust company.
- (2) The city, village or locality and county where the head office of such corporation is to be located.
- (3) The nature of its business, whether that of a commercial bank, or a trust company.
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders.
- (6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of directors from time to time with the approval of the ~~((supervisor))~~ director.
- (7) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.
- (8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this title is required or permitted to be set forth in the bylaws.
- (9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the bank is organized, or any provision limiting any of the powers granted in this title.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer to take acknowledgments.

Sec. 44. RCW 30.08.030 and 1973 1st ex.s. c 104 s 5 are each amended to read as follows:

When the notice of intention to organize and proposed articles of incorporation complying with the foregoing requirements have been received by the ~~((supervisor))~~ director, together with the fees required by law, ~~((he))~~ the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary, whether the character, responsibility and general fitness of the persons named in such articles are such as to command confidence and warrant belief that the business of the proposed bank or trust company will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighbor-

hood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed bank and whether the proposed bank or trust company is being formed for other than the legitimate objects covered by this title.

Sec. 45. RCW 30.08.040 and 1981 c 302 s 15 are each amended to read as follows:

After the ~~((supervisor))~~ director shall have satisfied himself or herself of the above facts, and, within six months of the date the notice of intention to organize has been received in his or her office, ~~((he))~~ the director shall notify the incorporators to file executed and acknowledged articles of incorporation with ~~((him))~~ the director in triplicate. Unless the ~~((supervisor))~~ director otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with ~~((him))~~ the director within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, ~~((he))~~ the director shall endorse upon each of the triplicates thereof, over his or her official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal ~~((he))~~ the director shall forthwith return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

Sec. 46. RCW 30.08.050 and 1986 c 279 s 19 are each amended to read as follows:

In case of approval the ~~((supervisor))~~ director shall forthwith give notice thereof to the proposed incorporators and file one of the triplicate articles of incorporation in his or her own office, and shall transmit another triplicate to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other articles of incorporation the secretary of state shall file such articles and record the same. Upon the filing of articles of incorporation approved as aforesaid by the ~~((supervisor))~~ director, with the secretary of state, all persons named therein and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by this title, and whose existence shall continue from the date of the filing of such articles until terminated pursuant to law; but such corporation shall not transact any business except as is necessarily preliminary to its organization until it has received a certificate of authority as provided herein.

Sec. 47. RCW 30.08.060 and 1986 c 279 s 20 are each amended to read as follows:

Before any bank or trust company shall be authorized to do business, and within ninety days after approval of the articles of incorporation or such other

time as the ~~((supervisor))~~ director may allow, it shall furnish proof satisfactory to the ~~((supervisor))~~ director that such corporation has a paid-in capital in the amount determined by the ~~((supervisor))~~ director, that the requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within thirty days after receipt of such proof, the ~~((supervisor))~~ director shall issue under his or her hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the corporation therein named has complied with the requirements of law, that it is authorized to transact the business of a bank or trust company, or both, as the case may be: PROVIDED, HOWEVER, That the ~~((supervisor))~~ director may make his or her issuance of the certificate to a bank or trust company authorized to accept deposits, conditional upon the granting of deposit insurance by the federal deposit insurance corporation, and in such event, shall set out such condition in a written notice which shall be delivered to the corporation.

One of the triplicate certificates shall be transmitted by the ~~((supervisor))~~ director to the corporation and one of the other two shall be filed by the ~~((supervisor))~~ director in the office of the secretary of state and shall be attached to ~~((said))~~ the articles of incorporation: PROVIDED, HOWEVER, That if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the ~~((supervisor))~~ director shall not transmit or file the certificate until such condition is satisfied.

Sec. 48. RCW 30.08.070 and 1986 c 279 s 21 are each amended to read as follows:

Every corporation heretofore or hereafter authorized by the laws of this state to do business as a bank or trust company, which corporation shall have failed to organize and commence business within six months after certificate of authority to commence business has been issued by the ~~((supervisor))~~ director, shall forfeit its rights and privileges as such corporation, which fact the ~~((supervisor))~~ director shall certify to the secretary of state, and such certificate of forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority: PROVIDED, That the ~~((supervisor))~~ director may, upon showing of cause satisfactory to him or her, issue an order under his or her hand and seal extending for not more than three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded therein.

Sec. 49. RCW 30.08.080 and 1961 c 280 s 1 are each amended to read as follows:

At any time not less than one year prior to the expiration of the time of the existence of any bank, trust company or mutual savings bank, it may by written application to the ~~((supervisor))~~ director, signed and verified by a majority of its

directors and approved in writing by the owners of not less than two-thirds of its capital stock, apply to the ~~((supervisor))~~ director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the ~~((supervisor))~~ director shall make such investigation of the applicant as he or she deems necessary. If ~~((he))~~ the director determines that the applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he or she shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence until such time as it be dissolved by the act of its shareholders owning not less than two-thirds of its stock, or until its certificate of authority becomes revoked or forfeited by reason of violation of law, or until its affairs be taken over by the ~~((supervisor))~~ director for legal cause and finally wound up by him or her. Otherwise ~~((he))~~ the director shall notify the applicant that he or she refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the ~~((supervisor))~~ director shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the ~~((supervisor))~~ director. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.

Should any bank, trust company or mutual savings bank fail to continue its existence in the manner herein provided and be not previously dissolved, the ~~((supervisor))~~ director shall at the end of its original term of existence immediately take possession thereof and wind up the same in the same manner as in the case of insolvency.

Sec. 50. RCW 30.08.082 and 1986 c 279 s 22 are each amended to read as follows:

(1) Notwithstanding any other provisions of law and if so authorized by its articles of incorporation or amendments thereto made in the manner provided in the case of a capital increase, any bank or trust company may, pursuant to action taken by its board of directors from time to time with the approval of the ~~((supervisor))~~ director, issue shares of preferred or special classes of stock with the attributes and in such amounts and with such par value, if any, as shall be determined by the board of directors from time to time with the approval of the ~~((supervisor))~~ director. No increase of preferred stock shall be valid until the amount thereof shall have been subscribed and actually paid in and a certificate of increase is received from the ~~((supervisor))~~ director.

(2) If provided in its articles of incorporation, a bank or trust company may issue shares of preferred or special classes having any one or several of the following provisions:

(a) Subjecting the shares to the right of the bank or trust company to repurchase or retire any such shares at the price fixed by the articles of incorporation for the repurchase or retirement thereof;

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) Having preference over any other class or classes of shares as to the payment of dividends;

(d) Having preference in the assets of the bank or trust company over any other class or classes of shares upon the voluntary or involuntary liquidation of the bank or trust company;

(e) Having voting or nonvoting rights; and

(f) Being convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

Sec. 51. RCW 30.08.083 and 1986 c 279 s 23 are each amended to read as follows:

(1) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series, and fixed and determined the variations in the relative rights and preferences as between series, the board of directors have authority to divide any or all of the classes into series and, within the limitation set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(2) In order for the board of directors to establish a series, where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as is not fixed and determined by the articles of incorporation.

(3) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file and execute in the manner provided in this section a statement setting forth:

(a) The name of the bank;

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(c) The date of adoption of such resolution; and

(d) That the resolution was duly adopted by the board of directors.

(4) The statement shall be executed in triplicate by the bank by one of its officers and shall be delivered to the ~~((supervisor))~~ director. If the ~~((supervisor))~~ director finds that the statement conforms to law, the ~~((supervisor))~~ director shall, when all fees have been paid as provided in this title:

(a) Endorse on each of the triplicate originals the word "Filed," and the effective date of the filing thereof;

(b) File two of the originals; and

(c) Return the other original to the bank or its representative.

(5) Upon the filing of the statement by the (~~supervisor~~) director with the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

Sec. 52. RCW 30.08.084 and 1986 c 279 s 24 are each amended to read as follows:

Notwithstanding any other provisions of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of shares of preferred or special classes of stock shall be entitled to receive such dividends on the purchase price received by the bank or trust company for such stock as may be provided by the articles of incorporation or by the board of directors of the bank or trust company with the approval of the (~~supervisor~~) director.

No dividends shall be declared or paid on common stock until cumulative dividends, if any, on the shares of preferred or special classes of stock shall have been paid in full; and, if the (~~supervisor~~) director takes possession of a bank or trust company for purposes of liquidation, no payments shall be made to the holders of the common stock until the holders of the shares of preferred or special classes of stock shall have been paid in full such amount as may be provided under the terms of said shares plus all accumulated dividends, if any.

Sec. 53. RCW 30.08.088 and 1986 c 279 s 27 are each amended to read as follows:

The authorized but unissued shares shall not become a part of the capital stock until they have been issued and paid for. Prior to the issuance of authorized but unissued stock, the bank shall notify the (~~supervisor~~) director of the proposed issuance and the consideration to be received therefor and receive the (~~supervisor's~~) director's approval thereof, except that such notification and such approval shall not be required if the authorized but unissued stock is issued to employees of the bank pursuant to approved stock option, stock purchase, stock bonus or other similar plans approved by the (~~supervisor~~) director.

Sec. 54. RCW 30.08.090 and 1987 c 420 s 3 are each amended to read as follows:

Any bank or trust company may amend its articles of incorporation, in any manner not inconsistent with the provisions of this title, by a vote of the stockholders representing two-thirds of each class of shares entitled to vote under the terms of the shares at any regular meeting, or special meeting duly called for that purpose in the manner prescribed by its bylaws. A certificate of the fact and the terms of the amendment shall be executed by a majority of the directors and filed as required herein for articles of incorporation. No amendment shall be made whereby a bank becomes a trust company unless such bank shall first receive permission from the (~~supervisor~~) director.

Sec. 55. RCW 30.08.092 and 1987 c 420 s 4 are each amended to read as follows:

A bank or trust company may increase or decrease its capital stock by amendment to its articles of incorporation. No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in and a certificate of increase is received from the ~~((supervisor))~~ director. No reduction of the capital stock shall be made to an amount less than is required for capital by the ~~((supervisor))~~ director.

Banks having authorized but unissued stock shall disclose on all statements of condition the amount of authorized stock, and the amount of issued and paid-in stock, as certified by the ~~((supervisor))~~ director. The ~~((supervisor))~~ director shall certify to each bank having authorized but unissued stock the amount of its issued and paid-in capital stock, and this amount shall be used in all statements of condition and in computing the capital of the bank for purposes of determining loan or investment limits until a new certificate is issued by the ~~((supervisor))~~ director. In cases where a bank issued authorized but unissued stock as permitted by this title, a new certificate need not be requested upon each stock issue. However, if the bank so requests and the ~~((supervisor))~~ director approves, a certificate of issued and paid-in capital stock shall be issued by the ~~((supervisor))~~ director. A new certificate must be requested at such time as any increase of paid-in capital stock represents five percent of the authorized capital stock and at such time as there is no remaining authorized but unissued stock.

Sec. 56. RCW 30.08.095 and 1981 c 302 s 19 are each amended to read as follows:

The ~~((supervisor))~~ director shall collect in advance fees for the following services:

For filing application for certificate of authority and attendant investigation as outlined in the law;

For filing application for certificate conferring trust powers upon a state or national bank;

For filing articles of incorporation, or amendments thereof, or other certificates required to be filed in his or her office;

For filing merger agreement and attendant investigation;

For filing application to relocate main office or branch and attendant investigation;

For issuing a certificate of increase or decrease of capital stock;

For issuing each certificate of authority;

For furnishing copies of papers filed in his or her office, per page.

The ~~((supervisor))~~ director shall establish the amount of the fee for each of the above transactions, and for other services rendered ~~((by the division of banking by rules and regulations promulgated pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended))~~.

Every bank or trust company shall also pay to the secretary of state for filing any instrument with him or her the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations.

Sec. 57. RCW 30.08.120 and 1955 c 33 s 30.08.120 are each amended to read as follows:

Before any such national bank shall engage in such trust business, it shall file a certificate with the ~~((supervisor))~~ director, wherein it agrees to conform to all the regulations and restrictions of this title relating to trust companies and trust business, including the examination of its trust business by the ~~((supervisor))~~ director and the payment of the fees therefor, herein prescribed for the examination of banks and trust companies. Upon the filing of such a certificate in a form to be approved by the ~~((supervisor))~~ director, such national bank shall be subject to all the regulations and restrictions of this title relative to trust companies and trust business.

Sec. 58. RCW 30.08.140 and 1986 c 279 s 29 are each amended to read as follows:

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

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

continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.

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

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

this subdivision or paragraph relating to rules, regulations and limitations prescribed by the ((~~supervisor~~)) director.

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

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the ((~~supervisor~~)) director.

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

Sec. 59. RCW 30.08.160 and 1955 c 33 s 30.08.160 are each amended to read as follows:

Any trust company receiving moneys for investment, and for which it shall give its bonds as in RCW 30.08.150(12) provided, shall within ten days after any regular report is called for from banks or trust companies by the ((~~supervisor~~)) director, make a statement of its total liability, on all bonds issued and then in force, certified by its board of directors, and shall at the same time deposit with the state treasurer, for the benefit of the holders of such bonds or obligations, sufficient securities or money so that it will have on deposit with said state treasurer a sufficient amount of said securities, which may be exchanged for other securities as necessity may require, or money to, at any time, pay all of said liability. In the event of its failure to make such deposits, it shall cease doing such business: PROVIDED, That whenever money shall have been deposited with the treasurer, it may be withdrawn at any time upon a like amount of securities being deposited in its stead: AND PROVIDED FURTHER, That the securities deposited shall consist of such securities as are by this title permitted for the investment of trust funds.

Sec. 60. RCW 30.08.180 and 1955 c 33 s 30.08.180 are each amended to read as follows:

Every bank and trust company shall make at least three regular reports each year to the ((~~supervisor~~)) director, as of the dates which he or she shall designate, according to form prescribed by him or her, verified by the president, manager or cashier and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of such corporation. The dates designated by the ((~~supervisor~~)) director shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Each such report in condensed form, to be prescribed by the ((~~supervisor~~)) director, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be

no newspaper published in such place, then in some newspaper published in the same county.

Every such corporation shall also make such special reports as the ~~((supervisor))~~ director shall call for.

Sec. 61. RCW 30.08.190 and 1977 c 38 s 1 are each amended to read as follows:

Every regular report shall be filed with the ~~((supervisor))~~ director within thirty days from the date of issuance of the notice therefor and proof of publication of such report shall be filed with the ~~((supervisor))~~ director within forty days from such date. Every special report shall be filed with the ~~((supervisor))~~ director within such time as shall be specified by ~~((him))~~ the director in the notice therefor.

Every bank and trust company which fails to file any report, required to be filed as aforesaid, or to file proof of publication of any report required to be published, within the time herein specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state.

Sec. 62. RCW 30.12.010 and 1987 c 420 s 1 are each amended to read as follows:

Every bank and trust company shall be managed by not less than five directors, who need not be residents of this state. Directors shall be elected by the stockholders and hold office for such term as is specified in the articles of incorporation, not exceeding three years, and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's or trust company's bylaws. Shareholders may not cumulate their votes unless the articles of incorporation specifically so provide. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each quarter and whenever required by the ~~((supervisor))~~ director. A majority of the then serving board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Immediately upon election, each director shall take, subscribe, swear to, and file with the ~~((supervisor))~~ director an oath that he or she will, so far as the duty devolves upon him or her, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation. Vacancies in the board of directors shall be filled by the board.

Sec. 63. RCW 30.12.030 and 1986 c 279 s 33 are each amended to read as follows:

(1) Except as otherwise permitted by the ((~~supervisor~~)) director under specified terms and conditions, the board of directors of each bank and trust company shall direct and require good and sufficient surety company fidelity bonds issued by a company authorized to engage in the insurance business in the state of Washington on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank or trust company, on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be individual, schedule or blanket form, and the premiums therefor shall be paid by the bank or trust company.

(2) The said directors shall also direct and require suitable insurance protection to the bank or trust company against burglary, robbery, theft and other similar insurance hazards to which the bank or trust company may be exposed in the operations of its business on the premises or elsewhere.

The said directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

Sec. 64. RCW 30.12.040 and 1977 ex.s. c 178 s 5 are each amended to read as follows:

The ((~~supervisor~~)) director may serve upon a director, officer, or employee of any bank or trust company a written notice of the ((~~supervisor's~~)) director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank or trust company, or both, whenever:

(1) In the opinion of the ((~~supervisor~~)) director any director, officer, or employee of any bank or trust company has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank or trust company; or

(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as director, officer, or employee; and

(2) The ((~~supervisor~~)) director determines that:

(a) The bank or trust company has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee.

Sec. 65. RCW 30.12.042 and 1977 ex.s. c 178 s 6 are each amended to read as follows:

A notice of an intention to remove a director, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a bank or trust company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the ((~~supervisor~~)) director at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the ((~~supervisor~~)) director finds that any of the grounds specified in the notice have been established, the ((~~supervisor~~)) director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank or trust company as the ((~~supervisor~~)) director may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the ((~~supervisor~~)) director or a reviewing court.

Sec. 66. RCW 30.12.044 and 1977 ex.s. c 178 s 7 are each amended to read as follows:

If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank or trust company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank or trust company are removed under this chapter, the ((~~supervisor~~)) director shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

Sec. 67. RCW 30.12.047 and 1977 ex.s. c 178 s 10 are each amended to read as follows:

Any present or former director, officer, or employee of a bank or trust company or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank or trust company involved; or who directly or indirectly

solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the bank or trust company; or who, without the prior approval of the ~~((supervisor))~~ director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank or trust company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended.

Sec. 68. RCW 30.12.050 and 1986 c 279 s 34 are each amended to read as follows:

A director, officer, employee or other agent of any bank shall not purchase, or be interested in the purchase, directly or indirectly, of any of its assets without the previous consent of a majority of disinterested directors of the bank: PROVIDED, That if the fair market value of the asset or assets exceed ten thousand dollars, not less than ten days' prior notice of the sale shall be given to the ~~((supervisor))~~ director.

Sec. 69. RCW 30.12.060 and 1985 c 305 s 6 are each amended to read as follows:

(1) Any bank or trust company shall be permitted to make loans to any employee of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any employee to any other person, to the same extent as if the employee were in no way connected with the corporation. Any bank or trust company shall be permitted to make loans to any officer of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any officer to any other person: PROVIDED, That the total value of the loans made and obligation acquired for any one officer shall not exceed such amount as shall be prescribed by the ~~((supervisor of banking))~~ director pursuant to regulations adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended: AND PROVIDED FURTHER, That no such loan shall be made, or obligation acquired, in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, unless a resolution authorizing the same shall be adopted by a vote of a majority of the board of directors of such corporation prior to the making of such loan or discount, and such vote and resolution shall be entered in the corporate minutes. In no event shall the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors. No loan in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, shall be made by any bank or trust company to any director of such corporation nor shall the note or obligation in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, of such director be discounted by any such corporation, or by any officer or employee thereof in its behalf, unless a resolution authorizing the same shall be adopted by a vote of a majority of the

entire board of directors of such corporation exclusive of the vote of such interested director, and such vote and resolution shall be entered in the corporate minutes. In no event may the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors.

Each bank or trust company shall at such times and in such form as may be required by the (~~supervisor~~) director, report to the (~~supervisor~~) director all outstanding loans to directors of such bank or trust company.

The amount of any endorsement or agreement of suretyship or guaranty of any such director to the corporation shall be construed to be a loan within the provisions of this section. Any modification of the terms of an existing obligation (excepting only such modifications as merely extend or renew the indebtedness) shall be construed to be a loan within the meaning of this section.

(2) "Unimpaired surplus," as used in this section, consists of the sum of the following amounts:

- (a) Fifty percent of the reserve for possible loan losses;
- (b) Subordinated notes and debentures;
- (c) Surplus;
- (d) Undivided profits; and
- (e) Reserve for contingencies and other capital reserves, excluding accrued dividends on preferred stock.

Sec. 70. RCW 30.12.070 and 1955 c 33 s 30.12.070 are each amended to read as follows:

The (~~supervisor~~) director may at any time, if in his or her judgment excessive, unsafe or improvident loans are being made or are likely to be made by a bank or trust company to any of its directors, or to any corporation, copartnership or association of which such director is a stockholder, member, co-owner, or in which such director is financially interested, or like discounts of the notes or obligations of any such director, corporation, copartnership or association are being made or are likely to be made, require such bank or trust company to submit to him or her for approval all proposed loans to, or discounts of the note or obligation of, any such director, corporation, copartnership or association, and thereafter such proposed loans and discounts shall be reported upon such forms and with such information concerning the desirability and safety of such loans or discounts and of the responsibility and financial condition of the person, corporation, copartnership or association to whom such loan is to be made or whose note or obligation is to be discounted and of the amount and value of any collateral that may be offered as security therefor, as the (~~supervisor~~) director may require, and no such loan or discount shall be made without his or her written approval thereon.

Sec. 71. RCW 30.12.100 and 1955 c 33 s 30.12.100 are each amended to read as follows:

Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the (~~supervisor~~) director, or of anyone connected with his or her office, shall be guilty of a felony.

Sec. 72. RCW 30.12.180 and 1955 c 33 s 30.12.180 are each amended to read as follows:

Whenever the (~~supervisor~~) director shall notify the board of directors of a bank or trust company to levy an assessment upon the stock of such corporation and the holders of two-thirds of the stock shall consent thereto, such board shall, within ten days from the issuance of such notice, adopt a resolution for the levy of such assessment, and shall immediately upon the adoption of such resolution serve notice upon each stockholder, personally or by mail, at his or her last known address, to pay such assessment; and that if the same be not paid within twenty days from the date of the issuance of such notice, his or her stock will be subject to sale and all amounts previously paid thereon shall be subject to forfeiture. If any stockholder fail within said twenty days to pay the assessment as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder to be sold to make good the deficiency. The sale shall be held at such time and place as shall be designated by the board of directors and shall be either public or private, as the board shall deem best. At any time after the expiration of sixty days from the expiration of said twenty-day period the (~~supervisor~~) director may require any stock upon which the assessment remains unpaid to be canceled and deducted from the capital of the corporation. If such cancellation shall reduce the capital of the corporation below the minimum required by this title or its articles of incorporation the capital shall, within thirty days thereafter be increased to the required amount by original subscription, in default of which the (~~supervisor~~) director may take possession of such corporation in the manner provided by law in case of insolvency.

Sec. 73. RCW 30.12.240 and 1989 c 180 s 7 are each amended 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~~) director, 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.

Sec. 74. RCW 30.20.005 and 1981 c 192 s 23 are each amended to read as follows:

Deposits made by individuals in a national bank, state bank, trust company, or other banking institution subject to the supervision of the (~~supervisor of banking~~) director are governed by chapter 30.22 RCW.

Sec. 75. RCW 30.20.090 and 1981 c 192 s 25 are each amended to read as follows:

Notice to any national bank, state bank, trust company, mutual savings bank or bank under the supervision of the (~~supervisor of banking~~) director, doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person may be disregarded without liability by said bank or trust company unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him or her wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank or trust company, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: PROVIDED, That where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant, the bank or trust company shall without liability refuse to deliver such property for a period of not more than five business days from the date that the bank received the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section.

This section shall not apply to accounts subject to chapter 30.22 RCW.

Sec. 76. RCW 30.36.020 and 1979 c 106 s 5 are each amended to read as follows:

With the approval of the (~~supervisor~~) director, any bank, trust company or mutual savings bank may at any time, through action of its board of directors or trustees, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate to the claims of depositors and other creditors. The holders of capital notes or debentures issued by a bank or trust company shall have such conversion rights as may be provided in the articles of incorporation with the approval of the (~~supervisor~~) director.

Sec. 77. RCW 30.36.030 and 1955 c 33 s 30.36.030 are each amended to read as follows:

Where any bank, trust company or mutual savings bank has issued and has outstanding capital notes or debentures, it may carry its capital stock on its books

at a sum less than par, and it shall not be considered impaired so long as the amount of such capital notes or debentures equals or exceeds the impairment as found by the ~~((supervisor))~~ director.

Sec. 78. RCW 30.36.040 and 1955 c 33 s 30.36.040 are each amended to read as follows:

Before such capital notes or debentures are retired or paid by the bank, trust company or mutual savings bank, any existing impairment of its capital stock must be overcome or corrected to the satisfaction of the ~~((supervisor))~~ director.

Sec. 79. RCW 30.40.020 and 1986 c 279 s 39 are each amended to read as follows:

A bank or trust company may, with the approval of the ~~((supervisor))~~ director, establish and operate branches anywhere within the state. A bank having a paid-in capital of not less than one million dollars may, with the approval of the ~~((supervisor))~~ director, establish and operate branches in any foreign country. The ~~((supervisor's))~~ director's approval of a branch within this state shall be conditioned on a finding that the resources in the neighborhood of the proposed location and in the surrounding country offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate objects covered by this title. The ~~((supervisor's))~~ director's approval of a branch in a foreign country shall be conditioned on a finding that the proposed location offers a reasonable promise of adequate support for the proposed branch, ~~((and))~~ and that the proposed branch is not being formed for other than the legitimate objects covered by this title.

Sec. 80. RCW 30.42.020 and 1983 c 3 s 48 are each amended to read as follows:

For the purposes of this chapter, the following terms shall be defined as follows:

(1) "Alien bank" means a bank organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

(2) "Office" means a branch or agency of an alien bank carrying on business in this state pursuant to this chapter.

(3) "Branch" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.105, 30.42.115, and 30.42.155.

(4) "Agency" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.180.

(5) "Bureau" means an alien bank's operation in this state exercising the powers authorized by RCW 30.42.230.

~~((6) "Supervisor" means the supervisor of banking of the state of Washington.))~~

Sec. 81. RCW 30.42.030 and 1973 1st ex.s. c 53 s 3 are each amended to read as follows:

An alien bank shall not establish and operate an office or bureau in this state unless it is authorized to do so by the ~~((supervisor))~~ director and unless it first complies with all of the provisions of this chapter and then only to the extent expressly permitted by this chapter.

Sec. 82. RCW 30.42.060 and 1973 1st ex.s. c 53 s 6 are each amended to read as follows:

An alien bank shall not hereafter open an office in this state until it has met the following conditions:

(1) It has filed with the ~~((supervisor))~~ director an application in such form and containing such information as shall be prescribed by the ~~((supervisor))~~ director.

(2) It has designated the ~~((supervisor))~~ director by a duly executed instrument in writing, its agent, upon whom process in any action or proceeding arising out of a transaction with the Washington office may be served. Such service shall have the same force and effect as if the alien bank were a Washington corporation and had been lawfully served with process within the state. The ~~((supervisor))~~ director shall forward by mail, postage prepaid, a copy of every process served upon him or her under the provisions of this subdivision, addressed to the manager or agent of such bank at its office in this state.

(3) It has allocated and assigned to its office within this state paid-in capital of not less than two hundred thousand dollars or such larger amounts as the ~~((supervisor))~~ director in his or her discretion may require.

(4) It has filed with the ~~((supervisor))~~ director a letter from its chief executive officer guaranteeing that the alien bank's entire capital and surplus is and shall be available for all liabilities and obligations of its office doing business in this state.

(5) It has paid the fees required by law and established by the ~~((supervisor))~~ director pursuant to RCW 30.08.095.

(6) It has received from the ~~((supervisor))~~ director his or her certificate authorizing the transaction of business in conformity with this chapter.

Sec. 83. RCW 30.42.070 and 1982 c 95 s 1 are each amended to read as follows:

The capital allocated as required in RCW 30.42.060(3) shall be maintained within this state at all times in cash or in ~~((supervisor))~~ director approved interest bearing bonds, notes, debentures, or other obligations: (1) Of the United States or of any agency or instrumentality thereof, or guaranteed by the United States; or (2) of this state, or of a city, county, town, or other municipal corporation, or instrumentality of this state or guaranteed by this state, or such other assets as the ~~((supervisor))~~ director may approve. Such capital shall be deposited with a bank qualified to do business in and having its principal place of business within this state, or in a national bank qualified to engage in banking in this state. Such

bank shall issue a written receipt addressed and delivered to the ~~((supervisor))~~ director reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of such alien bank's Washington office and that the same is subject to his or her order without offset for the payment of such creditors. For the purposes of this section, the term "creditor" shall not include any other offices, branches, subsidiaries, or affiliates of such alien bank. Subject to the approval of the ~~((supervisor))~~ director, reasonable arrangements may be made for substitution of securities. So long as it shall continue business in this state in conformance with this chapter and shall remain solvent, such alien bank shall be permitted to collect all interest and/or income from the assets constituting such allocated capital.

Should any securities so depreciate in market value and/or quality as to reduce the deposit below the amount required, additional money or securities shall be deposited promptly in amounts sufficient to meet such requirements. The ~~((supervisor))~~ director may make an investigation of the market value and of the quality of any security deposited at the time such security is presented for deposit or at any time thereafter. The ~~((supervisor))~~ director may make such charge as may be reasonable and proper for such investigation.

Sec. 84. RCW 30.42.080 and 1973 1st ex.s. c 53 s 8 are each amended to read as follows:

Every alien bank maintaining an office in this state shall keep the assets of its Washington office entirely separate and apart from the assets of its other operations as though the Washington office was conducted as a separate and distinct entity. Every such alien bank shall keep separate books of account and records for its Washington office and shall observe with respect to such office the applicable requirements of this chapter and the applicable rules and regulations of the ~~((supervisor))~~ director. The United States domiciled creditors of such alien bank's Washington office shall be entitled to priority with respect to the assets of its Washington office before such assets may be used or applied for the benefit of its other creditors or transferred to its general business.

Sec. 85. RCW 30.42.090 and 1973 1st ex.s. c 53 s 9 are each amended to read as follows:

The ~~((supervisor))~~ director may give or withhold his or her approval of an application by an alien bank to establish an office in this state at his or her discretion. ~~((His))~~ The director's decision shall be based on the information submitted to his or her office in the application required by RCW 30.42.060 and such additional investigation as the ~~((supervisor))~~ director deems necessary or appropriate. Prior to granting approval to said application, ~~((he))~~ the director shall have ascertained to his or her satisfaction that all of the following are true:

- (1) The proposed location offers a reasonable promise of adequate support for the proposed office;
- (2) The proposed office is not being formed for other than legitimate objects;

(3) The proposed officers of the proposed office have sufficient banking experience and ability to afford reasonable promise of successful operation;

(4) The reputation and financial standing of the alien bank is such as to command the confidence and warrant belief that the business of the proposed office will be conducted honestly and efficiently in accordance with the intent and purpose of this chapter, as set forth in RCW 30.42.010;

(5) The principal purpose of establishing such office shall be within the intent of this chapter.

The ~~((supervisor))~~ director shall not grant an application for an office of an alien bank unless the law of the foreign country under which laws the alien bank is organized permits a bank with its principal place of business in this state to establish in that foreign country a branch, agency or similar operation.

Sec. 86. RCW 30.42.100 and 1985 c 305 s 7 are each amended to read as follows:

If the ~~((supervisor))~~ director approves the application, he or she shall notify the alien bank of his or her approval and shall file certified copies of its charter, certificate or other authorization to do business with the secretary of state. Upon such filing, the ~~((supervisor))~~ director shall issue a certificate of authority stating that the alien bank is authorized to conduct business through a branch or agency in this state at the place designated in accordance with this chapter. Each such certificate shall be conspicuously displayed at all times in the place of business specified therein.

The office of the alien bank must commence business within six months after the issuance of the ~~((supervisor's))~~ director's certificate: PROVIDED, That the ~~((supervisor))~~ director for good cause shown may extend such period for an additional time not to exceed three months.

Sec. 87. RCW 30.42.105 and 1982 c 95 s 4 are each amended to read as follows:

An approved branch of an alien bank shall have the same power to make loans and guarantee obligations as a state bank chartered pursuant to Title 30 RCW: PROVIDED, HOWEVER, That the base for computing the applicable loan limitation shall be the entire capital and surplus of the alien bank. The ~~((supervisor))~~ director may adopt rules ~~((and regulations))~~ limiting the amount of loans to full-time employees of the branch.

Sec. 88. RCW 30.42.115 and 1985 c 305 s 8 are each amended to read as follows:

(1) Any branch of an alien bank that received approval of its branch application pursuant to RCW 30.42.090, or that had filed its branch application pursuant to RCW 30.42.060, on or before July 27, 1978, and any approved branch of an alien bank that has designated Washington as its home state pursuant to section 5 of the International Banking Act of 1978, shall have the same power to solicit and accept deposits as a state bank chartered pursuant to

Title 30 RCW, except that acceptance of initial deposits of less than one hundred thousand dollars shall be limited to deposits of the following:

(a) Any business entity, including any corporation, partnership, association, or trust, that engages in commercial activity for profit: PROVIDED, That there shall be excluded from this category any such business entity that is organized under the laws of any state or the United States, is majority-owned by United States citizens or residents, and has total assets, including assets of majority owned subsidiaries, of less than one million five hundred thousand dollars as of the date of the initial deposit;

(b) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(c) Any international organization which is composed of two or more nations;

(d) Any draft, check, or similar instrument for the transmission of funds issued by the branch;

(e) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit;

(f) Any depositor who established a deposit account on or before July 1, 1982, and who has continuously maintained the deposit account since that date: PROVIDED, That this subparagraph (f) of this subsection shall be effective only until July 1, 1985;

(g) Any other person: PROVIDED, That the amount of deposits under this subparagraph (g) of this subsection may not exceed four percent of the average of the branch's deposits for the last thirty days of the most recent calendar quarter, excluding deposits in the branch of other offices, branches, agencies, or wholly owned subsidiaries of the alien bank.

(2) As used in subsection (1) of this section, "initial deposit" means the first deposit transaction between a depositor and the branch. Different deposit accounts that are held by a depositor in the same right and capacity may be added together for purposes of determining the dollar amount of that depositor's initial deposit.

(3) Approved branches of alien banks, other than those described in subsection (1) of this section, may solicit and accept deposits only from foreign governments and their agencies and instrumentalities, persons, or entities conducting business principally at their offices or establishments abroad, and such other deposits that:

(a) Are to be transmitted abroad;

(b) Consist of collateral or funds to be used for payment of obligations to the branch;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the branch; or

(e) Represent compensation to the branch for extensions of credit or services to the customer.

(4) A branch may accept deposits, subject to the limitations set forth in subsections (1) and (3) of this section, only upon the same terms and conditions (including nature and extent of such deposits, withdrawal, and the payment of interest thereon) that banks organized under the laws of this state which are members of the Federal Reserve System may accept such deposits. Any branch that is not subject to reserve requirements under regulations of the Federal Reserve Board shall maintain deposit reserves in this state, pursuant to rules adopted by the ((supervisor)) director, to the same extent they must be maintained by banks organized under the laws of this state which are members of the Federal Reserve System.

Sec. 89. RCW 30.42.120 and 1982 c 95 s 2 are each amended to read as follows:

A branch shall not commence to transact in this state the business of accepting deposits or transact such business thereafter unless it has met the following requirements:

(1) It has obtained federal deposit insurance corporation insurance covering its eligible deposit liabilities within this state, or in lieu thereof, made arrangements satisfactory to the ((supervisor)) director for maintenance within this state of additional capital equal to not less than five percent of its deposit liabilities, computed on the basis of the average daily net deposit balances covering semimonthly periods as prescribed by the ((supervisor pursuant to RCW 30.04.090)) director. Such additional capital shall be deposited in the manner provided in RCW 30.42.070.

(2) It holds in this state currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness or other obligations payable in the United States or in United States funds or, with the approval of the ((supervisor)) director, in funds freely convertible into United States funds or such other assets as are approved by the ((supervisor)) director, in an amount not less than one hundred percent of the aggregate amount of liabilities of such alien bank payable at or through its office in this state. When calculating the value of the assets so held, credit shall be given for the amounts deposited pursuant to RCW 30.42.060(3) and 30.42.120(1), but there shall be excluded all amounts due from the head office and any other branch, agency, or other office or wholly-owned subsidiary of the bank, except those amounts due from such offices or subsidiaries located within the United States and payable in United States dollars.

(3) If deposits are not insured by the federal deposit insurance corporation, then that fact shall be disclosed to all depositors pursuant to rules ((and regulations)) of the ((supervisor)) director.

(4) If the branch conducts an international banking facility, the deposits of which are exempt from reserve requirements of the federal reserve banking

system, the liabilities of that facility shall be excluded from the deposit and other liabilities of the branch for the purposes of subsection (1) of this section.

Sec. 90. RCW 30.42.130 and 1973 1st ex.s. c 53 s 13 are each amended to read as follows:

The ~~((supervisor))~~ director may take possession of the office of an alien bank for the reasons stated and in the manner provided in chapter 30.44 RCW. Upon the ~~((supervisor))~~ director taking such possession of a branch, no deposit liabilities of which are insured by the federal deposit insurance corporation, the amounts deposited pursuant to RCW 30.42.120(1) shall thereupon become the property of the ~~((supervisor))~~ director, free and clear of any and all liens and other claims, and shall be held by ~~((him))~~ the director in trust for the United States domiciled depositors of the office in this state of such alien bank. Upon obtaining the approval of the superior court of Thurston county, the ~~((supervisor))~~ director shall reduce such deposited capital to cash and as soon as practicable distribute it to such depositors.

If sufficient cash is available, such distribution shall be in equal amounts to each such depositor: PROVIDED, That no such depositor receives more than the amount of his or her deposit or an amount equal to the maximum amount insured by the federal deposit insurance corporation, whichever is less. If sufficient cash is not available, such distribution shall be on a pro rata basis to each such depositor: PROVIDED, That no such depositor receives more than the maximum amount insured by the federal deposit insurance corporation. If any cash remains after such distribution, it shall be distributed pro rata to those depositors whose deposits have not been paid in full: PROVIDED, That no depositor receives more than the amount of his deposit. For purposes of this section, the term "depositor" shall not include any other offices, subsidiaries or affiliates of such alien bank.

The term "deposit" as used in this section shall mean the unpaid balance of money or its equivalent received or held by the branch in the usual course of its business and for which it has given or is obligated to give credit, either conditionally or unconditionally to a demand, time or savings account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch, or a letter of credit or traveler's checks on which the branch is primarily liable.

Claims of depositors and creditors shall be made and disposed of in the manner provided in chapter 30.44 RCW in the event of insolvency or inability of the bank to pay its creditors in this state. The capital deposit of the bank shall be available for claims of depositors and creditors. The claims of depositors and creditors shall be paid from the capital deposit in the following order or priority:

- (1) Claims of depositors not paid from the amounts deposited pursuant to RCW 30.42.120(1);
- (2) Claims of Washington domiciled creditors;
- (3) Other creditors domiciled in the United States; and
- (4) Creditors domiciled in foreign countries.

The ~~((supervisor))~~ director shall proceed in accordance with and have all the powers granted by chapter 30.44 RCW.

Sec. 91. RCW 30.42.140 and 1982 c 95 s 3 are each amended to read as follows:

The ~~((supervisor, deputy supervisor, or a bank examiner))~~ director, without previous notice, shall visit the office of an alien bank doing business in this state pursuant to this chapter at least once in each year, and more often if necessary, for the purpose of making a full investigation into the condition of such office, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director or member of its governing body, officer, employee, or agent of such alien bank or office. The ~~((supervisor))~~ director shall make such other full or partial examination as he or she deems necessary. The ~~((supervisor))~~ director shall collect, from each alien bank for each examination of the conditions of its office in this state, the estimated actual cost of such examination.

Sec. 92. RCW 30.42.160 and 1975 1st ex.s. c 285 s 3 are each amended to read as follows:

An alien bank may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other apartments in the same building to rent as a source of income: PROVIDED, That not to exceed thirty percent of its capital and surplus and undivided profits may be so invested without the approval of the ~~((supervisor))~~ director.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of business.

(3) Such as it shall purchase at sale under judgments, decrees, liens or mortgage foreclosures, against securities held by it.

(4) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(5) Such as shall be convenient for the residences of its employees.

No real estate except that specified in subsections (1) and (5) of this section may be carried as an asset on the corporation's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be granted by the ~~((supervisor))~~ director.

Sec. 93. RCW 30.42.210 and 1973 1st ex.s. c 53 s 21 are each amended to read as follows:

(1) Application procedure. An alien bank shall not establish and operate a bureau in this state unless it is authorized to do so and unless it has met the following conditions:

(a) It has filed with the ~~((supervisor))~~ director an application in such form and containing such information as shall be prescribed by the ~~((supervisor))~~ director;

(b) It has paid the fee required by law and established by the ~~((supervisor))~~ director pursuant to RCW 30.08.095;

(c) It has received from the ~~((supervisor—his))~~ director a certificate authorizing the applicant bank to establish and operate a bureau in conformity herewith.

(2) Upon receipt of the bank's application, and the conducting of such examination or investigation as the ~~((supervisor))~~ director deems necessary and appropriate and being satisfied that the opening of such bureau will be consistent with the purposes of this chapter, the ~~((supervisor))~~ director may grant approval for the bureau and issue ~~((his))~~ a certificate authorizing the alien bank to establish and operate a bureau in the state of Washington.

Sec. 94. RCW 30.42.220 and 1973 1st ex.s. c 53 s 22 are each amended to read as follows:

If the ~~((supervisor))~~ director approves the application, he or she shall notify the alien bank of his or her approval and shall file certified copies of its charter, certificate, or other authorization to do business with the secretary of state and with the recording officer of the county in which the bureau is to be located. Upon such filing, the ~~((supervisor))~~ director shall issue a certificate of authority stating that the alien bank is authorized to operate a bureau in this state at the place designated in accordance with this chapter. No such certificate shall be transferable or assignable. Such certificate shall be conspicuously displayed at all times in the place of business specified therein.

A bureau of an alien bank must commence business within six months after the issuance of the ~~((supervisor's))~~ director's certificate: PROVIDED, That the ~~((supervisor))~~ director for good cause shown may extend such period for an additional time not to exceed three months.

Sec. 95. RCW 30.42.230 and 1973 1st ex.s. c 53 s 23 are each amended to read as follows:

An alien bank may have as many bureaus in this state as the ~~((supervisor))~~ director will authorize. A bureau in this state may provide information about services offered by the alien bank, its subsidiaries and affiliates and may gather and provide business and economic information. A bureau may not take deposits, make loans or transact other commercial or banking business in this state.

Sec. 96. RCW 30.42.240 and 1973 1st ex.s. c 53 s 24 are each amended to read as follows:

The ~~((supervisor))~~ director is empowered to examine the bureau operations of an alien bank whenever he or she deems it necessary. The ~~((supervisor))~~ director shall collect from such alien bank the estimated actual cost of such examination.

Sec. 97. RCW 30.42.250 and 1973 1st ex.s. c 53 s 25 are each amended to read as follows:

An alien bank may operate temporary facilities at trade fairs or other commercial events of short duration without first obtaining the approval of the ~~((supervisor))~~ director: PROVIDED, That the activities of such temporary facility are limited solely to the dissemination of information: AND PROVIDED FURTHER, If an alien bank engages in such activity, it shall notify the ~~((supervisor))~~ director in writing prior to opening of the nature and location of such facility. The ~~((supervisor))~~ director is empowered to investigate the operation of such temporary facility if he or she deems it necessary, and to collect from the alien bank the estimated actual cost thereof.

Sec. 98. RCW 30.42.260 and 1973 1st ex.s. c 53 s 26 are each amended to read as follows:

(1) An office of an alien bank shall file the following reports with the ~~((supervisor))~~ director within such times and in such form as the ~~((supervisor))~~ director shall prescribe by rule ~~((or regulation))~~:

- (a) A statement of condition of the office;
- (b) A capital position report of the office;
- (c) A consolidated statement of condition of an alien bank.

(2) An office of an alien bank shall publish such reports as the ~~((supervisor by regulation))~~ director by rule may prescribe.

(3) An alien bank operating a bureau in this state shall file a copy of the alien bank's annual financial report with the ~~((supervisor))~~ director as soon as possible following the end of each fiscal year and shall file such other material as the ~~((supervisor))~~ director may prescribe by rule ~~((or regulation))~~.

Sec. 99. RCW 30.42.290 and 1973 1st ex.s. c 53 s 29 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall have the responsibility for assuring compliance with the provisions of this chapter. An alien bank that conducts business in this state in violation of any provisions of this chapter shall be guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day that each such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

(2) Every person who shall knowingly subscribe to or make or cause to be made any false entry in the books of any alien bank office or bureau doing business in this state pursuant to this chapter or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any such office or bureau or shall make, state or publish any false statement of the amount of the assets or liabilities of any such office or bureau shall be guilty of a felony.

(3) Every director or member of the governing body, officer, employee or agent of such alien bank operating an office or bureau in this state who conceals or destroys any fact or otherwise suppresses any evidence relating to a violation of this chapter is guilty of a felony.

(4) Any person who transacts business in this state on behalf of an alien bank which is subject to the provisions of this chapter, but which is not authorized to transact such business pursuant to this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day for each day that such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

Sec. 100. RCW 30.42.300 and 1973 1st ex.s. c 53 s 30 are each amended to read as follows:

If the ~~((supervisor))~~ director finds that any alien bank to which he or she has issued a certificate to operate an office or bureau in this state pursuant to this chapter has violated any law~~((:))~~ or rule ~~((or regulation))~~, or has conducted its affairs in an unauthorized manner, or has been unresponsive to the ~~((supervisor's))~~ director's lawful orders or directions, or is in an unsound or unsafe condition, or cannot with safety and expediency continue business, or if he or she finds that the alien bank's country is unjustifiably refusing to allow banks qualified to do business in and having their principal office within this state to operate offices or similar operations in such country, the ~~((supervisor))~~ director may suspend or revoke the certificate of such alien bank and notify it of such suspension or revocation.

Sec. 101. RCW 30.42.310 and 1973 1st ex.s. c 53 s 31 are each amended to read as follows:

An alien bank licensed to maintain an office or bureau in this state pursuant to this chapter may apply to the ~~((supervisor))~~ director for leave to change the location of its office or bureau. Such applications shall be accompanied by an investigation fee as established in accordance with RCW 30.42.330. Leave for a change of location shall be granted if the ~~((supervisor))~~ director finds that the proposed new location offers reasonable promise of adequate support for the office.

Sec. 102. RCW 30.42.320 and 1973 1st ex.s. c 53 s 32 are each amended to read as follows:

The ~~((supervisor))~~ director shall have power to adopt uniform rules ~~((and regulations))~~ to govern examination and reports of alien bank offices and bureaus doing business in this state pursuant to this chapter and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts and otherwise to govern the administration of this chapter.

Sec. 103. RCW 30.42.330 and 1973 1st ex.s. c 53 s 33 are each amended to read as follows:

The ~~((supervisor))~~ director shall collect in advance from an alien bank for filing its application for an office or a bureau and the attendant investigation, and for such other applications, approvals or certificates provided herein, such fee as shall be established by ~~((rules and regulations promulgated))~~ rule adopted pursuant to the administrative procedure act, chapter 34.05 RCW, as now or

hereafter amended. The alien bank shall also pay to the secretary of state and the county recording officer for filing instruments as required by this chapter the same fees as are charged general corporations for the filing of similar instruments and also the same license fees as are required of foreign corporations doing business in this state.

Sec. 104. RCW 30.43.010 and 1986 c 279 s 45 are each amended to read as follows:

As used in this chapter the term "financial institution" means any bank or trust company established in this state pursuant to Title 12, United States Code, chapter 2, or Title 30 RCW, any mutual savings bank established in this state pursuant to Title 32 RCW, any savings and loan association established in this state pursuant to Title 12, United States Code, chapter 12, or Title 33 RCW, and any credit union established in this state pursuant to Title 12, United States Code, chapter 14 or chapters 31.12 and 31.13 RCW.

~~((As used in this chapter, the term "supervisor" means, if applicable to banks, trust companies, or mutual savings banks, the supervisor of banking and, if applicable to savings and loan associations and credit unions, the supervisor of savings and loan associations, or the National Credit Union Administration in the case of federally chartered credit unions.))~~

As used in this chapter, the term "satellite facility" means an unmanned facility at which transactions, including, but not being limited to account transfers, payments, and instructions for deposits and withdrawals may be conducted and which is not a part of a branch or main office of the financial institution: PROVIDED, That such a facility shall not be construed to be the establishment of a branch: PROVIDED FURTHER, That an unmanned facility which is connected to a dispenser of goods or services and that originates or communicates funds transfer instructions for the payment of such goods or services shall not be a "satellite facility."

Sec. 105. RCW 30.43.020 and 1981 c 83 s 1 are each amended to read as follows:

A financial institution may, subject to the conditions hereof, and with the approval of the appropriate ~~((supervisor))~~ director, provide satellite facilities in addition to its main office and such branches as are authorized by law. The ~~((supervisor's))~~ director's approval shall be conditioned on a finding that the public convenience will be served by the proposed satellite facility. A satellite facility may be located anywhere within the state of Washington and, subject to RCW 30.43.045, may be located anywhere outside the state of Washington.

Sec. 106. RCW 30.43.045 and 1981 c 83 s 2 are each amended to read as follows:

Subject to the approval of the ~~((appropriate supervisor))~~ director, a financial institution may operate or use satellite facilities located outside the state of Washington, and, subject to the approval of the ~~((appropriate supervisor))~~ director, satellite facilities located within the state of Washington may be made

available to banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state.

The ~~((supervisor's))~~ director's approval shall be conditioned on a finding that the public convenience will be served by the proposed use or operation of the satellite facility. The ~~((supervisor))~~ director shall not grant approval for the use or operation of satellite facilities by banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state unless like facilities located in the jurisdiction in which these institutions are organized are made available on a reciprocal basis for the benefit of financial institutions which have offices in this state.

The ~~((supervisor's))~~ director's approval of the use or operation of satellite facilities located within the state of Washington by banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state is not approval or authority to conduct or transact any other business in this state by these banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which is not otherwise permitted by the laws of this state.

Sec. 107. RCW 30.44.010 and 1955 c 33 s 30.44.010 are each amended to read as follows:

Whenever it shall in any manner appear to the ~~((supervisor))~~ director that any bank or trust company has violated any provision of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner, the ~~((supervisor))~~ director may give notice to the bank or trust company so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and if such bank or trust company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as ~~((said-supervisor))~~ the director may allow, then the ~~((supervisor))~~ director may take possession of such bank or trust company as in case of insolvency.

Sec. 108. RCW 30.44.020 and 1955 c 33 s 30.44.020 are each amended to read as follows:

Whenever it shall in any manner appear to the ~~((supervisor-of-banking))~~ director that any offense or delinquency referred to in RCW 30.44.010 renders a bank or trust company in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this title, or that it has suspended payment of its obligations or is insolvent, ~~((said-supervisor))~~ the director may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within

such time and in such manner as he or she may specify or if he or she deems necessary he or she may take possession thereof without notice.

The board of directors of any such bank or trust company, with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30.12.180.

Sec. 109. RCW 30.44.030 and 1955 c 33 s 30.44.030 are each amended to read as follows:

Within ten days after the (~~(supervisor))~~ director takes possession thereof, a bank or trust company may serve a notice upon the (~~(supervisor))~~ director to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the (~~(supervisor))~~ director in good faith and for cause, but if it find that no cause existed for the taking possession of such corporation, it shall require the (~~(supervisor))~~ director to restore such bank or trust company to possession of its assets and enjoin him or her from further interference therewith without cause.

Sec. 110. RCW 30.44.040 and 1955 c 33 s 30.44.040 are each amended to read as follows:

Upon taking possession of any bank or trust company, the (~~(supervisor))~~ director shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the (~~(supervisor))~~ director shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation.

Sec. 111. RCW 30.44.050 and 1955 c 33 s 30.44.050 are each amended to read as follows:

Upon taking possession of any bank or trust company, the (~~(supervisor))~~ director shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he or she may sell, compound or compromise bad or doubtful debts, and upon such terms as the court shall direct borrow, mortgage, pledge or sell all or any part of the real estate and personal property of such corporation. He or she shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge or other instrument of title or security. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale or mortgage

thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He or she may appoint special (~~deputy supervisors~~) assistants and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He or she shall require each special (~~deputy~~) assistant to give a surety company bond, conditioned as he or she shall provide, the premium of which shall be paid out of the assets of such corporation. He or she may also employ an attorney for legal assistance in such administration and liquidation.

Sec. 112. RCW 30.44.060 and 1955 c 33 s 30.44.060 are each amended to read as follows:

The (~~supervisor~~) director shall publish once a week for four consecutive weeks in a newspaper which he or she shall select, a notice requiring all persons having claims against such corporation to make proof thereof at the place therein specified not later than ninety days from the date of the first publication of said notice, which date shall be therein stated. He or she shall mail similar notices to all persons whose names appear as creditors upon the books of the corporation. He or she may approve or reject any claims, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of such notice shall be prima facie evidence thereof. No action shall be brought on any claim after three months from the date of service of notice of rejection.

Claims of depositors may be presented after the expiration of the time fixed in the notice, and, if approved, shall be entitled to their proportion of prior dividends, if there be funds sufficient therefor, and shall share in the distribution of the remaining assets.

After the expiration of the time fixed in the notice the (~~supervisor~~) director shall have no power to accept any claim except the claim of a depositor, and all claims except the claims of depositors shall be barred.

Sec. 113. RCW 30.44.070 and 1955 c 33 s 30.44.070 are each amended to read as follows:

Upon taking possession of such corporation, the (~~supervisor~~) director shall make an inventory of the assets in duplicate and file one in his or her office and one in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, he or she shall make a duplicate list of claims presented, segregating those approved and those rejected, to be filed as aforesaid. He or she shall also make and file a supplemental list of claims at least fifteen days before the declaration of any dividend, and in any event at least every six months.

Sec. 114. RCW 30.44.080 and 1955 c 33 s 30.44.080 are each amended to read as follows:

Objection may be made by any interested person to any claim approved by the (~~supervisor~~) director, which objection shall be determined by the court upon such notice to the claimant and objector as the court shall prescribe.

Sec. 115. RCW 30.44.090 and 1955 c 33 s 30.44.090 are each amended to read as follows:

At any time after the expiration of the date fixed for the presentation of claims, the ~~((supervisor))~~ director, subject to the approval of the court, may declare one or more dividends out of the funds remaining in his or her hands after the payment of expenses.

Sec. 116. RCW 30.44.100 and 1955 c 33 s 30.44.100 are each amended to read as follows:

No receiver shall be appointed by any court for any bank or trust company nor shall any assignment of any bank or trust company for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the ~~((supervisor))~~ director by telegraph and mail of such appointment and the ~~((supervisor))~~ director shall forthwith take possession of such bank or trust company, as in case of insolvency, and such temporary receiver shall upon demand of the ~~((supervisor))~~ director surrender up to him or her such possession and all assets which shall have come into the hands of such receiver. The ~~((supervisor))~~ director shall in due course pay such receiver out of the assets of such corporation such amount as the court shall allow.

Sec. 117. RCW 30.44.130 and 1955 c 33 s 30.44.130 are each amended to read as follows:

All expenses incurred by the ~~((supervisor))~~ director in taking possession, administering and winding up any such corporation, including the expenses of ~~((deputies and other))~~ assistants and reasonable fees for any attorney who may be employed ~~((by him))~~ in connection therewith, and the reasonable compensation of any special ~~((deputy))~~ assistant placed in charge of such corporation shall be a first charge upon the assets thereof. Such charges shall be fixed by the ~~((supervisor))~~ director, subject to the approval of the court.

Sec. 118. RCW 30.44.140 and 1955 c 33 s 30.44.140 are each amended to read as follows:

When all proper claims of depositors and creditors (not including stockholders) have been paid, as well as all expenses of administration and liquidation and proper provision has been made for unclaimed or unpaid deposits and dividends, and assets still remain in his or her hands, the ~~((supervisor))~~ director shall call a meeting of the stockholders of such corporation, giving thirty days' notice thereof, by one publication in a newspaper published in the county where such corporation is located. At such meeting, each share shall entitle the holder thereof to a vote in person or by proxy. A vote by ballot shall be taken to determine whether the ~~((supervisor))~~ director shall wind up the affairs of such corporation or the stockholders appoint an agent to do so. The ~~((supervisor))~~ director, if so required, shall wind up such corporation and distribute its assets

to those entitled thereto. If the appointment of an agent is determined upon, the stockholders shall forthwith select such agent by ballot. Such agent shall file a bond to the state of Washington in such amount and so conditioned as the ((supervisor)) director shall require. Thereupon the ((supervisor)) director shall transfer to such agent the assets of such corporation then remaining in his or her hands, and be relieved from further responsibility in reference to such corporation. Such agent shall convert the assets of such corporation into cash and distribute the same to the parties thereunto entitled, subject to the supervision of the court. In case of his or her death, removal or refusal to act, the stockholders may select a successor with like powers.

Sec. 119. RCW 30.44.150 and 1955 c 33 s 30.44.150 are each amended to read as follows:

Any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid in the hands of the ((supervisor)) director for six months after order of final distribution, shall be deposited in a bank or trust company to his or her credit, in trust for the benefit of the persons entitled thereto and subject to the supervision of the court shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the ((supervisor)) director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

Sec. 120. RCW 30.44.160 and 1955 c 33 s 30.44.160 are each amended to read as follows:

Any bank or trust company may place itself under the control of the ((supervisor)) director to be liquidated as herein provided by posting a notice on its door as follows: "This bank (trust company) is in the hands of the State ((Supervisor of Banking)) Director of Financial Institutions."

Immediately upon the posting of such notice, the officers of such corporation shall notify the ((supervisor)) director thereof by telegraph and mail. The posting of such notice or the taking possession of any bank or trust company by the ((supervisor)) director shall be sufficient to place all of its assets and property of every nature in his or her possession and bar all attachment proceedings.

Sec. 121. RCW 30.44.170 and 1955 c 33 s 30.44.170 are each amended to read as follows:

Any bank or trust company may, upon receipt of written permission from the ((supervisor)) director, go into voluntary liquidation by a vote of its stockholders owning two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment.

Sec. 122. RCW 30.44.180 and 1955 c 33 s 30.44.180 are each amended to read as follows:

Whenever any bank or trust company shall voluntarily liquidate, any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid at the conclusion of the liquidation shall be transmitted to the ((~~supervisor~~)) director and shall be deposited by him or her in a bank or trust company to his or her credit in trust for the benefit of the persons entitled thereto, and shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the ((~~supervisor~~)) director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

Sec. 123. RCW 30.44.190 and 1955 c 33 s 30.44.190 are each amended to read as follows:

Whenever any bank or trust company shall be liquidated, voluntarily or involuntarily, and shall retain in its possession at the conclusion of the liquidation, uncalled for and unclaimed personal property left with it for safekeeping, such property shall, in the presence of at least one witness, be inventoried by the liquidating agent and sealed in separate packages, each package plainly marked with the name and last known address of the person in whose name the property stands on the books of the bank or trust company. If the property is in safe deposit boxes, such boxes shall be opened by the liquidating agent in the presence of at least one witness, and the property inventoried, sealed in packages and marked as above required. All the packages shall be transmitted to the ((~~supervisor~~)) director, together with certificates signed by the liquidating agent and witness or witnesses, listing separately the property standing in the name of any one person on the books of the bank or trust company, together with the date of inventory, and name and last known address of the person in whose name the property stands.

Sec. 124. RCW 30.44.200 and 1955 c 33 s 30.44.200 are each amended to read as follows:

Upon receiving possession of the packages, the ((~~supervisor~~)) director shall cause them to be opened in the presence of at least one witness, the property reinventoried, and the packages resealed, and held for safekeeping. The liquidated bank, its directors, officers, and shareholders, and the liquidating agent shall thereupon be relieved of responsibility and liability for the property so delivered to and received by the ((~~supervisor~~)) director. The ((~~supervisor~~)) director shall send immediately to each person in whose name the property stood on the books of the liquidated bank or trust company, at his or her last known address, in a securely closed, postpaid and registered letter, a notice that the property listed will be held in his or her name for a period of not less than two years. At any time after the mailing of such notice, and before the expiration of

two years, such person may require the delivery of the property so held, by properly identifying himself or herself and offering evidence of his or her right thereto, to the satisfaction of the ~~((supervisor))~~ director.

Sec. 125. RCW 30.44.210 and 1985 c 469 s 15 are each amended to read as follows:

After the expiration of two years from the time of mailing the notice, the ~~((supervisor))~~ director shall mail in a securely closed postpaid registered letter, addressed to the person at his or her last known address, a final notice stating that two years have elapsed since the sending of the notice referred to in RCW 30.44.200, and that the ~~((supervisor))~~ director will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of mailing the final notice. Unless the person shall, on or before the day mentioned, claim the property, identify himself or herself and offer evidence of his or her right thereto, to the satisfaction of the ~~((supervisor))~~ director, the ~~((supervisor))~~ director may sell all the property or articles of value listed in the notice, at public auction, at the time and place stated in the final notice: PROVIDED, That a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. Any such property held by the ~~((supervisor))~~ director, the owner of which is not known, may be sold at public auction after it has been held by the ~~((supervisor))~~ director for two years, provided, that a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held.

Sec. 126. RCW 30.44.220 and 1955 c 33 s 30.44.220 are each amended to read as follows:

The proceeds of such sale shall be deposited by the ~~((supervisor))~~ director in a bank or trust company to his or her credit, in trust for the benefit of the person entitled thereto, and shall be paid by him or her to such person upon receipt of satisfactory evidence of his or her right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the ~~((supervisor))~~ director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

Sec. 127. RCW 30.44.230 and 1955 c 33 s 30.44.230 are each amended to read as follows:

Whenever the personal property held by a liquidated bank or trust company shall consist either wholly or in part, of documents, letters, or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the ~~((supervisor))~~ director for a period of five years, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of the ~~((supervisor))~~ director and at least one other witness.

Sec. 128. RCW 30.44.240 and 1955 c 33 s 30.44.240 are each amended to read as follows:

A bank or trust company may for the purpose of voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the ((~~supervisor~~)) director and upon such terms and conditions as he or she may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause whatever or upon its being no longer engaged in the business of a bank or trust company, the ((~~supervisor~~)) director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the ((~~supervisor~~)) director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his or her records.

Sec. 129. RCW 30.44.250 and 1955 c 33 s 30.44.250 are each amended to read as follows:

Whenever the ((~~supervisor~~)) director has taken possession of a bank or trust company for any cause, he or she may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he or she shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he or she may permit such corporation to reopen upon such terms and conditions as he or she shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the ((~~supervisor~~)) director, as herein elsewhere defined.

Sec. 130. RCW 30.44.260 and 1955 c 33 s 30.44.260 are each amended to read as follows:

Where any files, records, documents, books of account or other papers have been taken over and are in the possession of the ((~~supervisor~~)) director in connection with the liquidation of any insolvent banks or trust companies under the laws of this state, the ((~~supervisor~~)) director may, in his or her discretion at any time after the expiration of one year from the declaration of the final dividend, or from the date when such liquidation has been entirely completed, destroy any of the files, records, documents, books of account or other papers which may appear to the ((~~supervisor~~)) director to be obsolete or unnecessary for future reference as part of the liquidation and files of his or her office.

Sec. 131. RCW 30.44.270 and 1973 1st ex.s. c 54 s 1 are each amended to read as follows:

The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank or trust company the deposits in which are to any extent insured by that corporation

and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the ~~((supervisor of banking))~~ director may appoint the federal deposit insurance corporation as receiver or liquidator of such bank or trust company. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank or trust company, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended.

Sec. 132. RCW 30.44.280 and 1973 1st ex.s. c 54 s 2 are each amended to read as follows:

The pendency of any proceedings for judicial review of the ~~((supervisor's))~~ director's actions in taking possession and control of a bank or trust company and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the bank or trust company which are insured by the corporation. During the pendency of any proceedings for judicial review, the ~~((supervisor of banking))~~ director shall make available to the federal deposit insurance corporation such facilities in or of the bank or trust company and such books, records, and other relevant data of the bank or trust company as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the bank or trust company. The federal deposit insurance corporation and its directors, officers, agents, and employees, and the ~~((supervisor of banking-))~~ director and his or her agents and employees shall be free from liability to the bank or trust company, its directors, stockholders, and creditors for or on account of any action taken in connection herewith.

Sec. 133. RCW 30.46.010 and 1975 1st ex.s. c 87 s 1 are each amended to read as follows:

For the purposes of this chapter the following terms shall be defined as follows:

(1) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

- (a) If a bank's capital is impaired or impairment of capital is threatened;
- (b) If a bank violates the provisions of Title 30 RCW or any other law or regulation applicable to banks;
- (c) If a bank conducts a fraudulent or questionable practice in the conduct of its business that endangers the bank's reputation or threatens its solvency;
- (d) If a bank conducts its business in an unsafe or unauthorized manner;
- (e) If a bank violates any conditions of its charter or any agreement entered with the ~~((supervisor))~~ director; or

(f) If a bank fails to carry out any authorized order or direction of the ~~((bank))~~ examiner or the ~~((supervisor))~~ director.

(2) "Exceeded its powers" shall mean and include, but not be limited to the following circumstances:

(a) If a bank has refused to permit examination of its books, papers, accounts, records, or affairs by the ~~((supervisor, his deputy))~~ director, assistant director, or duly commissioned examiners; or

(b) If a bank has neglected or refused to observe an order of the ~~((supervisor))~~ director to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" includes and means a written agreement by the bank to either supervisory direction or conservatorship under this chapter.

Sec. 134. RCW 30.46.020 and 1975 1st ex.s. c 87 s 2 are each amended to read as follows:

If upon examination or at any other time it appears to the ~~((supervisor))~~ director that any bank is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank appears to have exceeded its powers or has failed to comply with the law, or if such bank gives its consent, then the ~~((supervisor))~~ director shall upon his or her determination (1) notify the bank of his or her determination, and (2) furnish to the bank a written list of the ~~((supervisor))~~ director requirements to abate his or her determination, and (3) if the ~~((supervisor))~~ director makes further determination to directly supervise, he or she shall notify the bank that it is under the supervisory direction of the ~~((supervisor))~~ director and that the ~~((supervisor))~~ director is invoking the provisions of this chapter. If placed under supervisory direction the bank shall comply with the lawful requirements of the ~~((supervisor))~~ director within such time as provided in the notice of the ~~((supervisor))~~ director, subject however, to the provisions of this chapter. If the bank fails to comply within such time the ~~((supervisor))~~ director may appoint a conservator as hereafter provided.

Sec. 135. RCW 30.46.030 and 1975 1st ex.s. c 87 s 3 are each amended to read as follows:

During the period of supervisory direction the ~~((supervisor))~~ director may appoint a representative to supervise such bank and may provide that the bank may not do any of the following during the period of supervisory direction, without the prior approval of the ~~((supervisor))~~ director or the appointed representative.

- (1) Dispose of, convey or encumber any of the assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation, or liability.

Sec. 136. RCW 30.46.040 and 1975 1st ex.s. c 87 s 4 are each amended to read as follows:

After the period of supervisory direction specified by the ~~((supervisor))~~ director for compliance, if he or she determines that such bank has failed to comply with the lawful requirements imposed, upon due notice and hearing or by consent of the bank, the ~~((supervisor))~~ director may appoint a conservator, who shall immediately take charge of such bank and all of its property, books, records, and effects. The conservator shall conduct the business of the bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the ~~((supervisor))~~ director may direct. During the pendency of the conservatorship the conservator shall make such reports to the ~~((supervisor))~~ director from time to time as may be required by the ~~((supervisor))~~ director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank, including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such bank which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby. The ~~((supervisor))~~ director, or any newly appointed ~~((deputy))~~ assistant, may be appointed to serve as conservator. If the ~~((supervisor))~~ director, however, is satisfied that such bank is not in condition to continue business in the interest of its depositors or creditors under the conservator as above provided, the ~~((supervisor))~~ director may proceed with appropriate remedies provided by other provisions of this title.

Sec. 137. RCW 30.46.050 and 1975 1st ex.s. c 87 s 5 are each amended to read as follows:

All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the ~~((supervisor))~~ director and shall be a charge against the assets of the bank to be allowed and paid as the ~~((supervisor))~~ director may determine.

Sec. 138. RCW 30.46.060 and 1975 1st ex.s. c 87 s 6 are each amended to read as follows:

During the period of the supervisory direction and during the period of conservatorship, the bank may request the ~~((supervisor))~~ director to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the bank, and such request shall stay the action specified pending review of such action by the ~~((supervisor))~~ director. Any order entered by the ~~((supervisor))~~ director appointing a representative and providing that the bank shall not do certain acts as provided in RCW 30.46.030 and 30.46.040, any order entered by the ~~((supervisor))~~ director appointing a conservator, and any order by the ~~((supervisor))~~ director following the review of an action of the representative or conservator as herein above provided shall be subject to review in accordance with the administrative procedure act of the state of Washington.

Sec. 139. RCW 30.46.070 and 1975 1st ex.s. c 87 s 7 are each amended to read as follows:

Any suit filed against a bank or its conservator, after the entrance of an order by the ~~((supervisor))~~ director placing such bank in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere. The conservator appointed hereunder for such bank may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such bank including claims or causes of action belonging to or which may be asserted by such bank.

Sec. 140. RCW 30.46.090 and 1975 1st ex.s. c 87 s 9 are each amended to read as follows:

If the ~~((supervisor))~~ director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of this chapter to authorize administrative discretion—to allow the ~~((supervisor))~~ director administrative discretion in the event of unsound banking operations—and in furtherance of that purpose the ~~((supervisor))~~ director is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided.

Sec. 141. RCW 30.46.100 and 1975 1st ex.s. c 87 s 10 are each amended to read as follows:

The ~~((supervisor))~~ director is empowered to adopt and promulgate such reasonable rules ~~((and regulations))~~ as may be necessary for the implementation of this chapter and its purposes.

Sec. 142. RCW 30.49.030 and 1955 c 33 s 30.49.030 are each amended to read as follows:

This section is applicable where there is to be a resulting state bank.

Upon approval by the ~~((supervisor of banking))~~ director, state or national banks may be merged to result in a state bank, or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting shareholders.

Sec. 143. RCW 30.49.040 and 1986 c 279 s 49 are each amended to read as follows:

This section is applicable where there is to be a resulting state bank, except in the case of reorganization and exchange as authorized by this title.

(1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) The name of each merging state or national bank and location of each office;

(b) With respect to the resulting state bank, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging state or national banks for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the ~~((supervisor of banking))~~ director and the stockholders of each merging state or national bank;

(e) Provisions governing the manner of disposing of the shares of the resulting state bank if such shares are to be issued in the transaction and are not taken by dissenting shareholders of merging state or national banks;

(f) Such other provisions as the ~~((supervisor of banking))~~ director requires to discharge his or her duties with respect to the merger;

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the ~~((supervisor of banking))~~ director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank;

(3) Within sixty days after receipt by the ~~((supervisor of banking))~~ director of the papers specified in subsection (2) of this section, the ~~((supervisor of banking))~~ director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement shall be deemed approved. The ~~((supervisor of banking))~~ director shall approve the agreement if it appears that:

(a) The resulting state bank meets the requirements of state law as to the formation of a new state bank;

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

If the ~~((supervisor of banking))~~ director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging state or national banks to amend the merger agreement to obviate such objections.

Sec. 144. RCW 30.49.060 and 1955 c 33 s 30.49.060 are each amended to read as follows:

A merger which is to result in a state bank shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the ~~((supervisor of banking))~~ director of the executed agreement together with copies of the resolutions of the stockholders of each merging state or national bank approving it, certified by the bank's president or a vice

president and a secretary. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

The ~~((supervisor of banking))~~ director shall thereupon issue to the resulting state bank a certificate of merger specifying the name of each merging state or national bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging state or national bank is held.

Sec. 145. RCW 30.49.070 and 1955 c 33 s 30.49.070 are each amended to read as follows:

Except as provided in RCW 30.49.100, a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a state charter by the ~~((supervisor of banking))~~ director if he or she finds that the bank meets the standards as to location of offices, capital structures, and business experience and character of officers and directors for the incorporation of a state bank.

The national bank may apply for such charter by filing with the ~~((supervisor of banking))~~ director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

Sec. 146. RCW 30.49.090 and 1955 c 33 s 30.49.090 are each amended to read as follows:

The owner of shares of a state bank which were voted against a merger to result in a state bank, or against the conversion of a state bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand made to the resulting state or national bank at any time within thirty days after the effective date of the merger or conversion, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the merger or conversion, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting state or national bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger or conversion becomes effective, the ~~((supervisor of banking))~~ director shall cause an appraisal to be made.

The expenses of appraisal shall be paid by the resulting state bank.

The resulting state or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger

or conversion, which it will pay dissenting shareholders of the bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

Sec. 147. RCW 30.49.100 and 1955 c 33 s 30.49.100 are each amended to read as follows:

Where a resulting state bank is not to exercise trust powers, the ~~((supervisor of banking))~~ director shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging state or national banks or the converting state or national bank.

Sec. 148. RCW 30.49.110 and 1955 c 33 s 30.49.110 are each amended to read as follows:

If a merging or converting state or national bank has assets which do not conform to the requirements of state law for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the ~~((supervisor of banking))~~ director may permit a reasonable time to conform with state law.

Sec. 149. RCW 30.49.120 and 1955 c 33 s 30.49.120 are each amended to read as follows:

Without approval by the ~~((supervisor of banking))~~ director no asset shall be carried on the books of the resulting state bank at a valuation higher than that on the books of the merging or converting state or national bank at the time of its last examination by a state examiner or national bank examiner before the effective date of the merger or conversion.

Sec. 150. RCW 30.56.020 and 1955 c 33 s 30.56.020 are each amended to read as follows:

The ~~((supervisor of banking))~~ director is hereby empowered, upon the written application of the directors of a bank, if in his or her judgment the circumstances warrant it, to authorize a bank to postpone, for a period of ninety days and for such further period or periods as he or she may deem expedient, the payment of such proportions or amounts of the demands of its depositors from time to time as he or she may deem necessary. The period or periods of postponement and the proportions or amounts of the demands to be deferred shall be determined by him or her according to the ability of the bank to pay withdrawals. By the regulations prescribed for deferred payments, the ~~((supervisor))~~ director may classify accounts and limit payments to depositors of the several classes differently. The ~~((supervisor's))~~ director's orders, regulations and directions shall be in writing and be filed in his or her office, and copies thereof shall be delivered to the bank and be forthwith posted in a conspicuous place in the banking room.

Sec. 151. RCW 30.56.030 and 1955 c 33 s 30.56.030 are each amended to read as follows:

During postponement of payments the bank shall remain open for business and be in charge of its officers, but shall not make any loans, investments or expenditures except such as the ~~((supervisor))~~ director will approve as necessary to conserve its assets and pay the cost of operation. The bank's failure during a period of postponement to repay deposits existing at the commencement of the period, shall not authorize or require the ~~((supervisor))~~ director to take charge of or liquidate the bank, nor constitute ground for the appointment of a receiver.

Sec. 152. RCW 30.56.040 and 1955 c 33 s 30.56.040 are each amended to read as follows:

Deposits received during a period of postponement and for sixty days thereafter shall be kept separate from other assets of the bank, shall not draw interest, shall not be loaned or invested except by depositing with reserve banks or investing in liquid securities approved by the ~~((supervisor))~~ director, and shall be withdrawable upon demand. If during a postponement of payments, or at the expiration thereof, the ~~((supervisor))~~ director shall take charge of the bank for liquidation, deposits made during the period of postponement shall be deemed trust funds and be repaid to the depositors forthwith.

Sec. 153. RCW 30.56.050 and 1955 c 33 s 30.56.050 are each amended to read as follows:

At the request of the directors of a bank, the ~~((supervisor))~~ director may propose a plan for its reorganization, if in his or her judgment it would be for the best interests of the bank's creditors and of the community which the bank serves. The plan may contemplate such temporary ratable reductions of the demands of depositors and other creditors as would leave its reserve adequate and its capital and surplus unimpaired after the charging off of bad and doubtful debts; and also may contemplate a postponement of payments as in a case falling within RCW 30.56.020. The plan shall be fully described in a writing, the original of which shall be filed in the office of the ~~((supervisor))~~ director and several copies of which shall be furnished the bank, where one or more copies shall be kept available for inspection by stockholders, depositors and other creditors.

Sec. 154. RCW 30.56.060 and 1955 c 33 s 30.56.060 are each amended to read as follows:

If, within ninety days after the filing of the plan, creditors having unsecured demands against the bank aggregating not less than three-fourths of the amount of the unsecured demands of all its creditors, approved the plan, the ~~((supervisor))~~ director shall have power to declare the plan to be in effect. Thereupon the unsecured demands of creditors shall be ratably reduced according to the plan and appropriate debits shall be made in the books. The right of a secured creditor to enforce his or her security shall not be affected by the operation of the plan, but the amount of any deficiency to which he or she may be entitled shall be reduced as unsecured demands were reduced. If the plan contemplates a temporary postponement of payments, RCW 30.56.020, 30.56.030 and

30.56.040 shall be applicable, and the bank shall comply therewith and conduct its affairs accordingly.

Sec. 155. RCW 30.56.080 and 1955 c 33 s 30.56.080 are each amended to read as follows:

The failure of a bank operating under such a plan to pay to a creditor at any time a sum greater than the plan then requires, shall not constitute a default nor authorize or require the ~~((supervisor))~~ director to take charge of or liquidate the bank nor entitle the creditor to maintain an action against the bank.

Sec. 156. RCW 30.56.090 and 1955 c 33 s 30.56.090 are each amended to read as follows:

If the net assets of a bank operating under such a plan are sufficient to provide the capital and surplus of a newly organized bank in the same place, the ~~((supervisor))~~ director, under such reasonable conditions as he or she shall prescribe, may approve the incorporation of a new bank and permit it to take over the assets and business and assume the liabilities of the existing bank.

Sec. 157. RCW 30.60.010 and 1985 c 329 s 2 are each amended to read as follows:

(1) In conducting an examination of a bank chartered under Title 30 RCW, the ~~((supervisor of banking, deputy supervisor, or examiner))~~ director shall investigate and assess the record of performance of the bank in meeting the credit needs of the bank's entire community, including low and moderate-income neighborhoods. The ~~((supervisor))~~ director shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the ~~((supervisor))~~ director in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the ~~((supervisor))~~ director shall consider, independent of any federal determination, the following factors in assessing the bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) Other factors that, in the judgment of the ~~((supervisor))~~ director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The ~~((supervisor))~~ director shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- (a) Excellent performance: 1
- (b) Good performance: 2
- (c) Satisfactory performance: 3
- (d) Inadequate performance: 4
- (e) Poor performance: 5

Sec. 158. RCW 30.60.020 and 1985 c 329 s 3 are each amended to read as follows:

Whenever the ~~((supervisor of banking))~~ director must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the ~~((supervisor))~~ director shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application.

Sec. 159. RCW 30.60.030 and 1985 c 329 s 7 are each amended to read as follows:

The ~~((supervisor of banking))~~ director shall adopt all rules necessary to implement sections 2 through 6 of this act by January 1, 1986.

Sec. 160. RCW 30.60.901 and 1985 c 329 s 13 are each amended to read as follows:

This act shall take effect on January 1, 1986, but the (~~supervisor of banking and the supervisor of savings and loans~~) director may immediately take such steps as are necessary to ensure that this act is implemented on its effective date.

Sec. 161. RCW 31.04.015 and 1991 c 208 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) (~~"Supervisor" means the supervisor of banking of the department of general administration~~) "Director" means the director of financial institutions.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The (~~supervisor~~) director may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded. The (~~supervisor~~) director may adopt by rule a more detailed explanation of the meaning and use of this method.

Sec. 162. RCW 31.04.045 and 1991 c 208 s 5 are each amended to read as follows:

(1) Application for a license under this chapter must be in writing and in the form prescribed by the (~~supervisor~~) director. The application must contain at least the following information:

(a) The name and the business and the residence addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name of each officer and director;
(d) The street address, county, and municipality where business is to be conducted; and

(e) Such other information as the ~~((supervisor))~~ director may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the ~~((supervisor))~~ director an investigation fee and the initial year's license fee in an amount determined by rule of the ~~((supervisor))~~ director to be sufficient to cover the ~~((supervisor's))~~ director's costs in administering this chapter.

(3) Each applicant shall file and maintain a surety bond, approved by the ~~((supervisor))~~ director, in the penal sum of one hundred thousand dollars, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed the penal sum in the aggregate. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The ~~((supervisor))~~ director may define qualifying "long-term subordinated debt" for purposes of this section.

Sec. 163. RCW 31.04.055 and 1991 c 208 s 6 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the ~~((supervisor))~~ director finds that the applicant has paid all required fees, has complied with RCW 31.04.045, and that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the ~~((supervisor))~~ director does not find the conditions of subsection (1) of this section have been met, the ~~((supervisor))~~ director shall not issue the license. The ~~((supervisor))~~ director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The ~~((supervisor))~~ director shall approve or deny every application

for license under this chapter within sixty days from the filing of a complete application with the fees and the approved bond.

Sec. 164. RCW 31.04.075 and 1991 c 208 s 8 are each amended to read as follows:

The licensee may not maintain more than one place of business under the same license, but the ((supervisor)) director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the ((supervisor)) director. A licensee who has five licensed locations shall not be required to maintain a bond in a penal sum exceeding ten thousand dollars for each additionally licensed location.

Whenever a licensee wishes to change the place of business to a street address other than that designated in the license, the licensee shall give written notice to the ((supervisor)) director and shall obtain the ((supervisor's)) director's approval.

Sec. 165. RCW 31.04.085 and 1991 c 208 s 9 are each amended to read as follows:

A licensee shall, for each license held by any person, on or before the twentieth day of each December, pay to the ((supervisor)) director an annual license fee. At the same time the licensee shall file with the ((supervisor)) director the required bond or otherwise demonstrate compliance with RCW 31.04.045.

Sec. 166. RCW 31.04.093 and 1991 c 208 s 10 are each amended to read as follows:

(1) The ((supervisor)) director may revoke a license issued under this chapter if the ((supervisor)) director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the ((supervisor)) director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the ((supervisor)) director to deny the application for the original license. The ((supervisor)) director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the ((supervisor)) director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the ((supervisor)) director may revoke or suspend all of the licenses issued to the licensee.

(2) A licensee may surrender a license by delivering to the ((supervisor)) director written notice of surrender, but the surrender does not affect the

licensee's civil or criminal liability, if any, for acts committed before the surrender.

(3) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(4) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the ((supervisor)) director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the ((supervisor)) director finds that the licensee meets all the requirements of this chapter.

Sec. 167. RCW 31.04.105 and 1993 c 190 s 1 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees for title insurance, appraisals, recording, reconveyance, and releasing when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(5) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(6) Make open-end loans as provided in this chapter;

(7) Charge and collect a fee for dishonored checks in an amount approved by the ((supervisor)) director; and

(8) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Sec. 168. RCW 31.04.115 and 1993 c 405 s 1 are each amended to read as follows:

(1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(a) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(b) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection, the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the ((supervisor)) director. In adopting the rules the ((supervisor)) director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the ((supervisor)) director. In specifying such form the ((supervisor)) director shall consider Regulation Z promulgated by the board of

governors of the federal reserve system under the federal consumer credit protection act.

Sec. 169. RCW 31.04.145 and 1991 c 208 s 15 are each amended to read as follows:

For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the ((supervisor)) director may at any time, either personally or by a designee, investigate the loans and business and examine, wherever located, the books, accounts, records, and files used in the business of every licensee and of every person who is engaged in the business described in RCW 31.04.035, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the ((supervisor)) director and designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The ((supervisor)) director and persons designated by the ((supervisor)) director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing. The ((supervisor)) director shall make such an examination of the affairs, business, office, and records of each licensee at least once each eighteen months. The licensee so examined shall pay to the ((supervisor)) director the actual cost of examining and supervising each licensed place of business.

Sec. 170. RCW 31.04.155 and 1991 c 208 s 16 are each amended to read as follows:

The licensee shall keep and use in the business such books, accounts, and records as will enable the ((supervisor)) director to determine whether the licensee is complying with this chapter and with the rules adopted by the ((supervisor)) director under this chapter. The ((supervisor)) director shall have free access to such books, accounts, and records wherever located. Every licensee shall preserve the books, accounts, and records for at least two years after making the final entry on any loan recorded in them.

Each licensee shall on or before the first day of March each year file a report with the ((supervisor)) director giving such relevant information as the ((supervisor)) director reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state. The report must be made under oath and must be in the form prescribed by the ((supervisor)) director, who shall make and publish annually an analysis and recapitulation of the reports.

Sec. 171. RCW 31.04.165 and 1991 c 208 s 17 are each amended to read as follows:

(1) The ((supervisor)) director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by loan companies subject to this chapter. The ((supervisor)) director shall adopt all rules necessary to ensure

complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the (~~(supervisor)~~) director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the (~~(supervisor)~~) director may direct the discontinuance of any such injurious or illegal practice.

Sec. 172. RCW 31.04.175 and 1991 c 208 s 18 are each amended to read as follows:

(1) Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.

(2) A person who violates, or knowingly aids or abets the violation of any provision of this chapter for which no penalty has been prescribed, and a person who fails to perform any act that it is made his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor. No person who has been convicted for the violation of the banking laws of this state or of the United States may be permitted to engage in the business, or become an officer or official, of any licensee in this state.

(3) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the (~~(supervisor)~~) director or his or her agent.

Sec. 173. RCW 31.04.185 and 1991 c 208 s 19 are each amended to read as follows:

All rules adopted under or to implement the provisions of law repealed by sections 23 and 24, chapter 208, Laws of 1991 remain in effect until amended or repealed by the (~~(supervisor)~~) director.

Sec. 174. RCW 31.04.902 and 1991 c 208 s 25 are each amended to read as follows:

(1) Sections 1 through 23 of this act shall take effect January 1, 1992, but the (~~(supervisor)~~) director shall take such steps and adopt such rules as are necessary to implement this act by that date.

(2) Section 24 of this act shall take effect January 1, 1993.

Sec. 175. RCW 31.12.005 and 1984 c 31 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Branch" means any office, other than the principal place of business, maintained by a credit union for the purpose of providing services directly to its members. "Branch" does not include a facility that is limited to an electronic funds transferring machine that can be operated without the assistance of an employee of a credit union.

(3) "Credit union" means a credit union organized and operating under this chapter.

(4) "Director" means the director of financial institutions.

(5) "Employees" means the principal operating officer and other operating personnel of a credit union.

~~((5))~~ (6) "Federal credit union" means a credit union organized and operating under the laws of the United States.

~~((6))~~ (7) "Officers" means the officers of the board of a credit union who are elected under RCW 31.12.265.

~~((7))~~ (8) "Shares" and "deposits" are synonymous and interchangeable. Shares and deposits of a credit union shall be subject to such terms and conditions as established by the board of the credit union.

~~((8)) "Supervisor" means the supervisor of savings and loan associations appointed under RCW 43.19.100, or the duly authorized agent of the supervisor of savings and loan associations.)~~

(9) "Supervisory committee" means a committee having the powers and duties set forth in RCW 31.12.326 through 31.12.355. Supervisory committees are the statutory successors of auditing committees.

Sec. 176. RCW 31.12.015 and 1984 c 31 s 3 are each amended to read as follows:

A credit union is a cooperative society organized for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest. The ~~((supervisor))~~ director is the state's credit union regulatory authority whose purpose is to protect the members' financial interests, the integrity of credit unions as cooperative institutions, and the interests of the general public, and to ensure that state-chartered credit unions remain viable and competitive in this state.

Sec. 177. RCW 31.12.035 and 1984 c 31 s 5 are each amended to read as follows:

Seven or more persons who reside in this state may apply to the ~~((supervisor))~~ director for permission to organize a credit union. The ~~((supervisor))~~ director shall approve the application if it is in compliance with this chapter.

Sec. 178. RCW 31.12.045 and 1984 c 31 s 6 are each amended to read as follows:

(1) Membership in a credit union shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. The ~~((supervisor))~~ director may adopt rules: (a) Reasonably defining "common bond"; and (b) setting forth standards for the approval of charters.

(2) The ~~((supervisor))~~ director may approve the inclusion within the field of membership of a credit union a group having a separate common bond if the ~~((supervisor))~~ director determines that the group is not of sufficient size or resources to support a viable credit union of its own.

Sec. 179. RCW 31.12.055 and 1984 c 31 s 7 are each amended to read as follows:

(1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

(a) The initial name of the proposed credit union and its location;

(b) That the duration of the credit union is perpetual;

(c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable laws and rules;

(d) The number of its directors, which shall not be less than five nor greater than fifteen, and the names, occupations, and addresses of the persons who are to serve as the initial directors;

(e) The names, occupations, and addresses of the subscribers to the articles of incorporation, and a statement of the number of shares which each has agreed to take; and

(f) The initial par value of the shares of the credit union.

(2) Applicants shall submit the articles of incorporation in triplicate to the ~~((supervisor))~~ director.

Sec. 180. RCW 31.12.065 and 1984 c 31 s 8 are each amended to read as follows:

(1) Persons applying for the organization of a credit union shall adopt bylaws that are consistent with this chapter and that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

(a) The name of the credit union;

(b) The purposes of the credit union;

(c) The qualifications for membership in the credit union, including the minimum number of shares, if any, required for membership status, and the standards and procedures for expelling a member who has failed to maintain the minimum number of shares;

(d) The number of directors and supervisory committee members, and the length of terms they serve;

(e) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee are to be notified of meetings;

(f) The powers and duties of the officers elected by the board;

(g) The timing of the annual meeting and the manner in which members are to be notified of membership meetings, including special membership meetings;

(h) The number of members constituting a quorum at a membership meeting; and

(i) Other matters considered appropriate by the applicants to be included in the bylaws.

(2) Applicants shall submit the bylaws in duplicate to the ~~((supervisor))~~ director.

Sec. 181. RCW 31.12.075 and 1984 c 31 s 9 are each amended to read as follows:

(1) When articles of incorporation and bylaws complying with the requirements of RCW 31.12.055 and 31.12.065 have been filed with the ((supervisor)) director, the ((supervisor)) director shall:

(a) Determine whether the articles of incorporation and bylaws are consistent with the purposes and requirements of this chapter; and

(b) Determine the feasibility of the credit union, taking into account surrounding facts and circumstances pertaining to a successful operation of a credit union.

The ((supervisor)) director may establish by rule, as a prerequisite to approval of a proposed credit union, specific criteria consistent with the purposes and policies of this chapter.

(2) If the ((supervisor)) director is satisfied with the determinations made under subsection (1)(a) and (b) of this section, the ((supervisor)) director shall endorse each of the articles of incorporation "approved" and indicate the date the approval is granted, and return two sets of articles and one set of bylaws to the applicants.

(3) If the ((supervisor)) director is not satisfied with the determinations made under subsection (1)(a) and (b) of this section, the ((supervisor)) director shall endorse each of the articles of incorporation "refused," indicate the date of and reasons for the refusal, and return two copies of the articles of incorporation with one copy of the bylaws to the person from whom they were received. The ((supervisor)) director shall at the time of returning the copies of the articles of incorporation and bylaws also provide notice to the applicant of the applicant's right to appeal the refusal under chapter 34.05 RCW. The refusal is conclusive unless the applicant requests a hearing under chapter 34.05 RCW.

(4) The ((supervisor)) director shall accept or refuse the articles of incorporation within sixty days of receipt.

Sec. 182. RCW 31.12.085 and 1993 c 269 s 12 are each amended to read as follows:

(1) Upon the approval of the ((supervisor)) director under RCW 31.12.075(2), the applicants shall file a copy of the articles of incorporation with the secretary of state. Upon receipt of the approved articles of incorporation and a twenty dollar filing fee to be provided by the applicants, the secretary of state shall file and record the articles of incorporation. The applicants shall in writing promptly notify the ((supervisor)) director of the exact date of the filing.

(2) Upon the filing and recording of the approved articles of incorporation with the secretary of state, the persons named in the articles of incorporation and their successors may operate as a credit union, which shall have the powers and be subject to the duties and obligations of this chapter. A credit union shall not conduct business until the articles have been recorded by the secretary of state.

(3) A credit union shall organize and begin business within six months of the date that its articles of incorporation are filed and recorded with the secretary

of state or its charter shall become void, unless the ~~((supervisor))~~ director for cause grants an extension of the six-month period. The ~~((supervisor))~~ director shall not grant a single extension exceeding three months, but may grant as many extensions to a credit union as circumstances require.

Sec. 183. RCW 31.12.095 and 1984 c 31 s 11 are each amended to read as follows:

In order to simplify the organization of credit unions the ~~((supervisor))~~ director shall cause to be prepared forms of articles of incorporation and bylaws consistent with this chapter and, upon written application of seven residents of this state, shall supply to the applicants, at no cost, blank forms of the suggested articles of incorporation and bylaws.

Sec. 184. RCW 31.12.105 and 1984 c 31 s 12 are each amended to read as follows:

The articles of incorporation of a credit union may be amended, with the approval of the ~~((supervisor))~~ director, by a resolution of the board. Amendments to the articles of incorporation shall be filed with the ~~((supervisor))~~ director and the secretary of state.

Sec. 185. RCW 31.12.115 and 1984 c 31 s 13 are each amended to read as follows:

(1) Subject to the approval of the ~~((supervisor))~~ director under subsection (2) of this section, the bylaws of a credit union may be amended by the board of directors at any regular meeting or at a special meeting called for that purpose. An amendment of the bylaws requires the affirmative vote of two-thirds of the total members of the board. At least seven days before a meeting at which an amendment to the bylaws is to be voted upon, a copy of the proposed amendment, together with a written notice of the meeting as provided in the bylaws, shall be served upon each member of the board either personally or by mail to the director's last known post office address.

(2) An amendment to the bylaws of a credit union shall not become operative until it has been approved by the ~~((supervisor))~~ director. The ~~((supervisor))~~ director shall approve or disapprove an amendment within thirty days of receipt.

Sec. 186. RCW 31.12.125 and 1990 c 33 s 564 are each amended to read as follows:

A credit union may:

- (1) Issue shares to and receive deposits from its members as provided in this chapter and the bylaws of the credit union;
- (2) Make loans to its members as provided in this chapter and the bylaws of the credit union;
- (3) Pay dividends or interest to its members;
- (4) Impose reasonable charges for the services it provides to its members;
- (5) Impose financing charges and reasonable late charges in the event of default on loans in accordance with the bylaws of the credit union and recover

reasonable costs and expenses, including reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due it if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, hypothecate, sell, or otherwise dispose of a possessory interest in personal property and, with the prior written permission of the ~~((supervisor))~~ director, in real property, so long as the property is necessary or incidental to the operation of the credit union. The written permission of the ~~((supervisor))~~ director is not required for the acquisition and disposition of property through the collection of loans secured by the property;

(7) Deposit and invest funds in excess of the amount approved for loans to members as provided in this chapter;

(8) Borrow money, up to a maximum of fifty percent of its paid-in and unimpaired capital and surplus;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union. A credit union may not discount or sell more than ten percent of its assets without the prior written approval of the ~~((supervisor))~~ director;

(10) Accept deposits of deferred compensation of its members under the terms and conditions of RCW 28A.400.240 and 41.04.250(2);

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in other credit unions organized under this chapter or other laws and in associations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law; and

(14) Exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

Sec. 187. RCW 31.12.136 and 1987 c 338 s 1 are each amended to read as follows:

(1) Notwithstanding any other provision of law, a credit union may exercise any of the powers or authority conferred as of July 26, 1987, upon a federal credit union doing business in this state.

(2) In addition to the powers conferred under subsection (1) of this section, the ~~((supervisor))~~ director may by rule authorize credit unions to exercise any of the powers conferred at the time of the adoption of the rule upon a federal credit union doing business in this state if the ~~((supervisor))~~ director finds that the exercise of power serves the convenience and advantage of depositors and borrowers of state-chartered credit unions, and maintains the fairness of competition and parity between state-chartered credit unions and federal-chartered credit unions.

(3) Before exercising a power under subsection (1) or (2) of this section, the board of a credit union shall adopt a resolution identifying and formally adopting that power.

Sec. 188. RCW 31.12.195 and 1987 c 338 s 3 are each amended to read as follows:

(1) A special meeting of a credit union may be called by a majority of the board, a majority vote of the supervisory committee, or upon written application of at least ten percent or two thousand, whichever is less, of the voting members of a credit union. A request for a special meeting of a credit union shall be in writing and shall state specifically the purpose or purposes for which the meeting is called. If the special meeting is being called for the removal of a director the notice shall state the name of the director whose removal is sought.

(2) Upon receipt of a request for a special meeting, the secretary of the credit union shall designate the time and place at which the special meeting will be held. The designated place of the meeting shall be a reasonable location within the county in which the principal office of the credit union is located. The designated time of the meeting shall be no sooner than twenty nor later than thirty days after the request is received by the secretary. The secretary shall within ten days of receipt of the request give notice of the meeting, including the purpose for which the meeting is called, as provided in the bylaws. A willful violation of this section constitutes a violation of this chapter and constitutes grounds sufficient for the suspension and removal of the secretary under RCW 31.12.575.

(3) Except as provided in this subsection, the chairman or president of the board shall preside over special meetings. If the purpose of the special meeting includes the proposed removal of the chairman or president from the board, the next highest ranking officer of the board whose removal is not sought shall preside over the special meeting. If the removal of all of the officers of the board is sought, the chairman of the supervisory committee shall preside over the special meeting. After every special meeting, the chairman of the supervisory committee shall report to the (~~supervisor~~) director the results of the special meeting and whether the special meeting was conducted in a fair manner in accordance with the bylaws of the credit union and with customary rules of parliamentary procedure.

(4) Voting by mail ballot on issues to be presented at a special meeting is prohibited except with regard to mergers under RCW 31.12.695. Voting by mail ballot on a merger under RCW 31.12.695 may be authorized by the board in accordance with rules established by the (~~supervisor~~) director.

Sec. 189. RCW 31.12.206 and 1984 c 31 s 22 are each amended to read as follows:

Members of a credit union who are calling for a special meeting, the purpose of which is to remove a majority of the board, may file a petition with the (~~supervisor~~) director setting forth the reasons for which removal is sought

and seeking the issuance of a cease and desist order. The ~~((supervisor))~~ director may, after reviewing the merits of the petition, issue a cease and desist order prohibiting the directors and employees of the credit union from conducting any credit union business outside the scope of the usual daily affairs of the credit union. The cease and desist order shall remain in effect until revoked or modified by the ~~((supervisor))~~ director or until the conclusion of the special meeting.

Sec. 190. RCW 31.12.215 and 1984 c 31 s 23 are each amended to read as follows:

A credit union desiring to establish a branch shall submit to the ~~((supervisor))~~ director a notice of intent to establish a branch on a form provided by the ~~((supervisor))~~ director at least thirty days before conducting business at the branch.

Sec. 191. RCW 31.12.306 and 1984 c 31 s 32 are each amended to read as follows:

(1) Each director, committee member, and employee of a credit union shall be bonded in an amount and with surety and conditions established by the ~~((supervisor))~~ director.

(2) When the bond coverage under subsection (1) of this section is suspended or terminated, the board of the affected credit union shall notify the ~~((supervisor))~~ director in writing within five days of having received notice of the suspension or termination.

Sec. 192. RCW 31.12.335 and 1984 c 31 s 35 are each amended to read as follows:

The supervisory committee of a credit union shall:

- (1) Meet as often as necessary and at least quarterly;
- (2) Keep fully informed as to the financial condition of the credit union;
- (3) Cause to be made semiannually a complete examination of the cash, the credit union accounts, including income and expense, and the members' share accounts in accordance with rules adopted by the ~~((supervisor))~~ director; and
- (4) Report its findings and recommendations to the board and make an annual report to the members at the annual meeting.

Sec. 193. RCW 31.12.355 and 1984 c 31 s 37 are each amended to read as follows:

Within forty-five days after the end of the fiscal year of a credit union, the supervisory committee of a credit union shall make a report to the ~~((supervisor))~~ director on a form provided by the ~~((supervisor))~~ director. A credit union that fails to submit the report within the time prescribed, or that fails to submit other reports within thirty days of a written request by the ~~((supervisor))~~ director, shall pay to the state five dollars for each day until the report is submitted. The penalty for any single delinquency shall not exceed one hundred dollars and may be waived by the ~~((supervisor))~~ director.

Sec. 194. RCW 31.12.385 and 1984 c 31 s 40 are each amended to read as follows:

Shares purchased and deposits made in a credit union by an individual are governed by chapter 30.22 RCW. An individual member may purchase shares and make deposits in a credit union in an amount that does not exceed five hundred dollars or twenty percent of the total shares of the credit union, whichever is greater. A fraternal organization, partnership, or corporation that is a member may purchase shares and make deposits in an amount that does not exceed twenty percent of the assets of the credit union, unless the ~~((supervisor))~~ director authorizes a greater amount. A credit union may require from a member ninety days notice of the intention to withdraw shares or deposits. The notice requirement may be extended with the written consent of the ~~((supervisor))~~ director.

Sec. 195. RCW 31.12.406 and 1987 c 338 s 6 are each amended to read as follows:

(1) A credit union may make loans to its members with the approval of a credit committee or loan officer. A credit union shall not make loans to a fraternal organization, partnership, or corporation in excess of the total shares of the organization, partnership, or corporation without the written consent of the ~~((supervisor))~~ director.

(2) A credit union may make to individual members:

(a) Personal loans secured by the note of the member or other adequate security, including, but not limited to, equity interests in real estate, automobiles, boats, motorhomes, and travel trailers. The aggregate of personal loans to one member shall be limited to five thousand dollars or two and one-half percent of the assets of the credit union, whichever is greater, unless the ~~((supervisor))~~ director approves in writing a greater loan amount;

(b) Student loans under student loan programs of this state or the United States;

(c) Loans for the acquisition of a modular home or mobile home as defined by RCW 82.50.010, secured by a first security interest in that modular home or mobile home, owned by the member. A loan under this subsection shall not exceed eighty-five percent of the purchase price or of the appraised value of the modular home or mobile home, whichever is less;

(d) Residential real estate loans under RCW 31.12.415;

(e) Loans to its members under an act of congress known as the "FHA Title I, National Housing Act of 1934," June 27, 1934 (12 U.S.C. Sec. 1701 to 1750, inc.); and

(f) Loans to credit union members in participation with other credit unions, credit union organizations, or financial organizations. The credit union which originates a loan under this subsection shall retain an interest of at least ten percent of the face amount of the loan unless the loan is a real estate loan in which case there is no retention requirement.

(3) Personal loans shall be given preference, and in the event there are not sufficient funds available to satisfy all approved loan applicants, further preference shall be given to small loans.

Sec. 196. RCW 31.12.415 and 1984 c 31 s 43 are each amended to read as follows:

(1) For purposes of this section a residential real estate loan is a loan secured by a first mortgage, deed of trust, real estate contract, or other first lien on the borrower's interest in a one-to-four family dwelling, including an individual cooperative unit, or a loan made for the construction of the dwelling. The dwelling shall be insured by hazard insurance in an amount at least as great as the credit union's interest in the dwelling or the value of the dwelling, whichever is less. A residential real estate loan shall not exceed ten thousand dollars or two and one-half percent of the assets of the credit union, whichever is greater, without the approval of the ~~((supervisor))~~ director.

(2) Except for loans made with the intent of sale on the secondary market, the total amount of loans held by a credit union under this section shall not exceed:

(a) Ten percent of its total assets if its total assets are less than one hundred thousand dollars;

(b) Twenty percent of its total assets if its total assets are greater than one hundred thousand dollars but less than one million dollars; or

(c) Thirty percent of its total assets if its total assets are greater than one million dollars.

Sec. 197. RCW 31.12.425 and 1987 c 338 s 7 are each amended to read as follows:

(1) The capital or surplus funds in excess of the amount for which loans are approved may be deposited or invested in any of the following ways, so long as the investment has not been in default as to principal or interest within five years prior to the date of purchase:

(a) Accounts in banks or trust companies, including national banks located in this state, or other states, the accounts of which are insured by the federal deposit insurance corporation. The deposits made by a credit union under this subsection may exceed the insurance limits established by the federal deposit insurance corporation;

(b) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(c) Obligations issued by corporations designated under Section 9101 of Title 31 U.S.C., or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association;

(d) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(e) Shares, share certificates, or share deposits of other credit unions or savings and loan associations organized or authorized to do business under the laws of this state, other states, or the United States, the accounts of which are insured or guaranteed by the federal savings and loan insurance corporation, the national credit union administration, the Washington credit union share guaranty association, or another insurer approved by the ~~((supervisor))~~ director. The deposits made by a credit union under this subsection may exceed the insurance or guarantee limits established by the organization insuring or guaranteeing the institution into which the deposits are made;

(f) Common trust funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to two percent of a corporation owned by the Washington credit union league;

(h) Shares, stocks, loans, or other obligations of an organization of which the membership or ownership is confined primarily to credit unions and the purpose of which is to strengthen, advance, or provide services to the credit union industry. An investment under subsection (1)(h) of this section shall be limited to one percent of the total paid-in and unimpaired capital and surplus of the credit union, but a credit union may, in addition to the investment, lend to the organization an amount not exceeding an additional one percent of the total paid-in and unimpaired capital and surplus of the credit union;

(i) Loans to other credit unions organized or authorized to do business under the laws of this state, other states, or the United States. The aggregate of loans issued under this subsection shall be limited to twenty-five percent of the paid-in and unimpaired capital of the lending credit union; or

(j) Other investments authorized in accordance with rules adopted by the ~~((supervisor))~~ director consistent with this chapter.

(2) The board may appoint an investment committee to make and manage the investments under this section. An investment committee shall remain subject to the supervision of the board.

Sec. 198. RCW 31.12.435 and 1984 c 31 s 45 are each amended to read as follows:

(1) A credit union may invest a reasonable amount of its funds in real property or leasehold interests for its own use in conducting business if:

(a) The aggregate of its regular reserve and its undivided earnings equals five percent of the total of its share accounts;

(b) The board approves the investment in real property for its own use in conducting business by a two-thirds majority vote of the total number of directors;

(c) The total investment in the property does not exceed seven and one-half percent of the aggregate of its share and deposit accounts; and

(d) The ~~((supervisor))~~ director approves of the investment in writing.

(2) The ((~~supervisor~~)) director may waive the restrictions of this section. The restrictions of this section do not affect investments existing as of July 1, 1984.

Sec. 199. RCW 31.12.445 and 1984 c 31 s 46 are each amended to read as follows:

(1) At the end of each accounting period and before the payment of dividends to members, a credit union shall set apart as a regular reserve an amount in accordance with subsection (2) of this section.

(2)(a) If a credit union has been in operation for four or more years and has assets of at least five hundred thousand dollars it shall reserve ten percent of gross income until the regular reserve equals four percent of outstanding loans and then shall reserve five percent of gross income until the regular reserve equals six percent of outstanding loans.

(b) If a credit union has been in operation for less than four years or has assets of less than five hundred thousand dollars, it shall reserve ten percent of gross income until the regular reserve equals seven and one-half percent of outstanding loans and then shall reserve five percent of gross income until the regular reserve equals ten percent of outstanding loans.

(c) The ((~~supervisor~~)) director may authorize a credit union falling under subsection (2)(b) of this section to follow the reserving requirements for credit unions falling under subsection (2)(a) of this section.

(d) In computing outstanding loans for purposes of reserving, a credit union may exclude loans secured by shares and loans insured or guaranteed by the federal government or the government of this state to the extent of the security, insurance, or guarantee.

(3) When the regular reserve falls below the percentage of outstanding loans required under subsection (2) of this section, a credit union shall replenish the regular reserve by again reserving a portion of gross income as set forth in subsection (2) of this section.

(4) The regular reserve and the investments thereof shall be held to meet contingencies or losses in the business of the credit union and shall not be distributed to its members except in the case of dissolution or with the permission of the ((~~supervisor~~)) director.

Sec. 200. RCW 31.12.455 and 1984 c 31 s 47 are each amended to read as follows:

A credit union may with the approval of the ((~~supervisor~~)) director, in lieu of complying with the requirements of RCW 31.12.445, comply with the reserve requirements and regulations of the national credit union administration.

Sec. 201. RCW 31.12.465 and 1984 c 31 s 48 are each amended to read as follows:

The ((~~supervisor~~)) director may, if deemed necessary, require a credit union to establish a liquidity reserve of up to five percent of unimpaired capital. The

liquidity reserve shall be in cash or investments with maturities of one year or less.

Sec. 202. RCW 31.12.475 and 1984 c 31 s 49 are each amended to read as follows:

The ~~((supervisor))~~ director may require a credit union to charge-off or set-up a special reserve fund for such delinquent loans or other assets as in the ~~((supervisor's))~~ director's opinion require such action.

Sec. 203. RCW 31.12.506 and 1984 c 31 s 52 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, a credit union shall not pay or become liable to pay as salaries, fees, wages, or other compensation to officers, directors, agents, attorneys, and employees and for rent, advertising, and all other operating expenses, sums of money in excess of ten percent of the average amount of assets of the credit union during the prior twelve months.

(2) Subsection (1) of this section notwithstanding, a credit union shall not be limited in its expenditures to a sum less than six hundred dollars in a calendar year.

(3) The ~~((supervisor))~~ director may waive the restrictions of subsection (1) of this section if, in the ~~((supervisor's))~~ director's opinion: (a) Circumstances warrant a waiver, and (b) waiver will not jeopardize the financial condition of the credit union.

Sec. 204. RCW 31.12.516 and 1984 c 31 s 53 are each amended to read as follows:

The powers of supervision and examination of credit unions are vested in the ~~((supervisor))~~ director. The ~~((supervisor))~~ director shall require each credit union to conduct business in compliance with this chapter and other laws that apply to credit unions, and has the power to commence and prosecute actions and proceedings, to enjoin violations, and to collect sums due the state of Washington from a credit union authorized to conduct business under this chapter.

Sec. 205. RCW 31.12.526 and 1984 c 31 s 54 are each amended to read as follows:

(1) A credit union organized and qualified as a credit union in another state which has not had its authority to operate in another state suspended or revoked may operate as a credit union under this chapter if:

(a) The ~~((supervisor))~~ director has approved an application to do business in this state;

(b) A credit union organized under the laws of this state is permitted to do business in the state in which the credit union is organized;

(c) The interest rate charged by the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted in the state in which the credit union is organized, or exceed the maximum interest rate

which a credit union organized in this state is permitted to charge on similar loans, whichever is lower;

(d) The credit union has secured surety bond and fidelity bond coverages satisfactory to the ~~((supervisor))~~ director;

(e) The credit union has secured for the share accounts of its members insurance or other surety satisfactory to the ~~((supervisor))~~ director;

(f) The credit union submits to the ~~((supervisor))~~ director an annual audit or examination report of its most recently completed fiscal year; and

(g) The credit union complies with all other provisions of this chapter and rules adopted by the ~~((supervisor))~~ director.

(2) The ~~((supervisor))~~ director shall disapprove an application filed under this section or, upon reasonable notice and an opportunity for hearing, suspend or revoke the approval of an application, if the ~~((supervisor))~~ director finds that the standards of organization, operation, and regulation of the credit union do not reasonably conform with the standards under this chapter or that at least fifty percent of the members of the credit union are, or are reasonably expected to be, residents of this state. In considering the standards of organization, operation, and regulation of the credit union, the ~~((supervisor))~~ director may consider the laws and regulations of the state in which the credit union is organized. A decision under this subsection may be appealed under chapter 34.05 RCW.

(3) In implementing this section, the ~~((supervisor))~~ director may cooperate with the administrators of the credit union laws in other states and may share with the administrators the information received in the administration of this chapter.

(4) The ~~((supervisor))~~ director shall adopt rules for the periodic examination and investigation of the affairs of an out-of-state credit union operating in this state. The costs of examination and supervision shall be fully borne by the out-of-state credit union.

Sec. 206. RCW 31.12.535 and 1984 c 31 s 55 are each amended to read as follows:

The ~~((supervisor))~~ director may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter. Chapter 34.05 RCW shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter.

Sec. 207. RCW 31.12.545 and 1984 c 31 s 56 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall make an examination and full investigation into the affairs of each credit union at least once every eighteen months, unless the ~~((supervisor))~~ director determines with respect to a credit union that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter. The actual cost of examination and supervision shall be paid by the credit union examined. The ~~((supervisor))~~

director may waive all or a portion of the examination costs payable by the credit union, in light of the time and expense of the examination and the ability of the credit union to pay the costs. The examination costs with respect to the first examination of a credit union with assets under two hundred thousand dollars shall not be payable by that credit union.

(2) The ((supervisor)) director may accept in lieu of an examination under subsection (1) of this section the report of an examiner authorized to examine a credit union under the laws of the United States or another state or the report of an accountant, satisfactory to the ((supervisor)) director, who has made and submitted a report of the condition of the affairs of a credit union and, if approved, the report shall have the same force and effect as an examination under subsection (1) of this section.

(3) Communications from the ((supervisor)) director to the board of a credit union regarding an examination or report shall be read before the board at its first meeting following the receipt of the communication and the fact that the communication was read before the board shall be noted in the minutes of the meeting. The board shall promptly respond to the ((supervisor)) director either by stating that steps have been taken to comply with the communication or by stating that the board objects to the communication and stating the reasons for the objection.

Sec. 208. RCW 31.12.555 and 1984 c 31 s 57 are each amended to read as follows:

The ((supervisor)) director may investigate the affairs of a credit union service organization in which a credit union has an interest. A person or an entity that is not a credit union that has an interest in a credit union service organization in which a credit union has an interest is deemed to have consented to the investigation. For the purposes of this section and RCW 31.12.565, a sole proprietorship, partnership, or corporation that is primarily in the business of managing one or more credit unions shall be considered to be a credit union service organization.

Sec. 209. RCW 31.12.565 and 1984 c 31 s 58 are each amended to read as follows:

(1) Examination reports and information obtained by the ((supervisor's)) director's staff in conducting examinations of credit unions and credit union service organizations are confidential and privileged information and not subject to public disclosure under chapter 42.17 RCW.

(2) Notwithstanding subsection (1) of this section, the ((supervisor)) director may furnish examination reports prepared by the ((supervisor's)) director's office to:

- (a) Federal agencies empowered to examine state-chartered credit unions;
- (b) Officials empowered to investigate criminal charges. The ((supervisor)) director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and

members of the credit union who are named in that part of the examination report that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union, solely for its confidential use;

(d) The attorney general in his or her role as legal advisor to the ((~~supervisor~~)) director;

(e) Prospective merger partners or liquidating agents of a distressed credit union;

(f) Credit union administrators in other states regarding an out-of-state chartered credit union doing business in this state under this chapter, or regarding a credit union chartered under this chapter doing business in another state;

(g) Accounting firms under contract with the credit union;

(h) Companies that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage; or

(i) Companies, associations, or agencies insuring or guaranteeing the shares of or deposits in the credit union.

(3) Examination reports furnished under subsection (2) of this section remain the property of the ((~~supervisor's~~)) director's office and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of an individual or corporation, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports are sought to be discovered or used as evidence, a party upon notice to the ((~~supervisor~~)) director, may petition the court for an in-camera review of the reports. 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 does not apply to an action brought or defended by the ((~~supervisor~~)) director.

(5) This section does not apply to investigation reports prepared by the ((~~supervisor~~)) director and the ((~~supervisor's~~)) director's staff concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the ((~~supervisor~~)) director may adopt rules making confidential portions of the reports if in the ((~~supervisor's~~)) director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the ((~~supervisor~~)) director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

Sec. 210. RCW 31.12.575 and 1984 c 31 s 59 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may suspend a director or the principal operating officer of a credit union if, in the opinion of the ~~((supervisor))~~ director, the director or principal operating officer is dishonest, inefficient, incompetent, is willfully disobeying orders of the ~~((supervisor))~~ director, or is in any way violating this chapter or the bylaws of the credit union. The ~~((supervisor))~~ director shall give prompt notice of and the reasons for the suspension to the board of the affected credit union.

(2) Unless the ~~((supervisor))~~ director specifically provides otherwise in the order of suspension, an order of suspension shall take effect immediately. The suspended person shall be prohibited from all aspects of the operation of the credit union. The suspended person shall be barred from the credit union premises and shall surrender the possession of all property and records of the credit union. A person who knowingly violates an order of suspension or who knowingly aids in the violation of an order of suspension shall be guilty of a gross misdemeanor.

(3) Upon receipt of the notice of suspension, the board shall within twenty days call a meeting of its members to consider the causes of the suspension. The board shall give at least seven days' notice of the time and place of the meeting to the ~~((supervisor))~~ director unless the ~~((supervisor))~~ director agrees to accept shorter notice. If the board finds the ~~((supervisor's))~~ director's objection to be well-founded, the board shall remove the suspended person immediately.

(4) If the board fails to remove the suspended person as provided in subsection (3) of this section, the ~~((supervisor))~~ director may remove that person after reasonable notice and an opportunity to be heard under chapter 34.05 RCW. The suspension shall remain in effect for twenty days after the board meeting at which the board considers the suspension, during which time the ~~((supervisor))~~ director may call a hearing under this subsection. If the ~~((supervisor))~~ director calls a hearing, the suspension shall remain in effect until the time of the hearing.

Sec. 211. RCW 31.12.585 and 1984 c 31 s 60 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may issue and serve upon a credit union a notice of charges if in the opinion of the ~~((supervisor))~~ director the credit union:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the credit union;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the ~~((supervisor))~~ director in connection with the granting of any application or other request by the credit union or any written agreement made with the ~~((supervisor))~~ director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or the practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the credit union. The hearing shall be set not earlier than ten days nor later than

thirty days after service of the notice unless a later date is set by the ((~~supervisor~~)) director at the request of the credit union.

Unless the credit union appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ((~~supervisor~~)) director finds that any violation or practice specified in the notice of charges has been established, the ((~~supervisor~~)) director may issue and serve upon the credit union an order to cease and desist from the violation or practice. The order may require the credit union and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the credit union to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the credit union concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the ((~~supervisor~~)) director or a reviewing court.

Sec. 212. RCW 31.12.595 and 1984 c 31 s 61 are each amended to read as follows:

If the ((~~supervisor~~)) director determines that the act specified in RCW 31.12.585 is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union or to otherwise seriously prejudice the interests of its depositors, members, or shareholders, the ((~~supervisor~~)) director may issue a temporary order requiring the credit union to cease and desist from the violation or practice. The order shall become effective upon service on the credit union and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 31.12.605 pending the completion of the administrative proceedings under the notice and until the ((~~supervisor~~)) director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the credit union under RCW 31.12.585.

Sec. 213. RCW 31.12.615 and 1984 c 31 s 63 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.12.595, the ((~~supervisor~~)) director may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 214. RCW 31.12.625 and 1984 c 31 s 64 are each amended to read as follows:

(1) An administrative hearing provided in RCW 31.12.585 shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the ((~~supervisor~~)) director determines that a public hearing is necessary to

protect the public interest after fully considering the views of the party afforded the hearing.

(2) Within sixty days after the hearing, the ~~((supervisor))~~ director shall render a decision which shall include findings of fact upon which the decision is based and the ~~((supervisor))~~ director shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 31.12.585.

Sec. 215. RCW 31.12.635 and 1984 c 31 s 65 are each amended to read as follows:

(1) It is unlawful for a person to perform any of the following acts:

(a) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(b) To knowingly make a false statement or entry in a report required to be made to the ~~((supervisor))~~ director; or

(c) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(2) A violation of this section is a class C felony under chapter 9A.20 RCW.

Sec. 216. RCW 31.12.655 and 1984 c 31 s 67 are each amended to read as follows:

The ~~((supervisor))~~ director may request a special meeting of the board of a credit union if the ~~((supervisor))~~ director believes that a special meeting is necessary for the welfare of the credit union or the purposes of this chapter. The ~~((supervisor's))~~ director's request for a special meeting shall be made in writing to the secretary of the board and the request shall be handled in the same manner as a call for a special meeting under RCW 31.12.195. The ~~((supervisor))~~ director may require the attendance of all of the directors of the board at the special meeting, and an absence of a director unexcused by the ~~((supervisor))~~ director constitutes a violation of this chapter.

Sec. 217. RCW 31.12.665 and 1984 c 31 s 68 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may attend a regular or special meeting of the board of a credit union if the ~~((supervisor))~~ director believes that attendance at the meeting is necessary for the welfare of the credit union or the purposes of this chapter or if the board has requested the ~~((supervisor's))~~ director's attendance. The ~~((supervisor))~~ director shall provide reasonable notice to the board before attending a meeting.

(2) A communication from the ~~((supervisor))~~ director to the board shall upon the request of the ~~((supervisor))~~ director be read to the board at its next meeting and the fact that the communication was read shall be noted in the minutes.

Sec. 218. RCW 31.12.675 and 1984 c 31 s 69 are each amended to read as follows:

(1) The articles of incorporation of a credit union may be suspended or revoked, the credit union placed in involuntary liquidation, and a liquidating

agent appointed upon a finding by the ~~((supervisor))~~ director that the credit union is insolvent.

(2) Except as otherwise provided in this chapter, the ~~((supervisor))~~ director, before suspending or revoking the articles of incorporation of a credit union and placing the credit union in liquidation, shall issue and serve notice on the credit union concerned of the intention to suspend or revoke the articles and an order directing the credit union to show cause why its articles of incorporation should not be suspended or revoked, in accordance with chapter 34.05 RCW.

(3) If the ~~((supervisor))~~ director finds that the credit union is insolvent and the credit union fails to adequately show cause, the articles of incorporation shall be suspended or revoked and the credit union placed in involuntary liquidation. The ~~((supervisor))~~ director shall serve on the credit union an order directing the suspension or revocation and an order directing the involuntary liquidation and appointment of a liquidating agent under RCW 31.12.685, and a statement of the findings on which the order is based.

(4) The suspension or revocation shall be immediate and complete. Once the articles of incorporation are suspended or revoked, the credit union shall cease conducting business. The credit union may not accept any payment on shares or deposits, may not grant or pay out any new or previously approved loans, may not invest any of its assets, and may not declare or pay out any previously declared dividends. The liquidating agent of a credit union whose articles have been suspended or revoked may accept payments on loans previously paid out and may accept income from investments already made.

Sec. 219. RCW 31.12.685 and 1984 c 31 s 70 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall designate the liquidating agent in the order directing the involuntary liquidation of the credit union under RCW 31.12.675. On receipt of the order placing the credit union in involuntary liquidation, the officers and directors of the credit union concerned shall deliver to the liquidating agent possession and control of all books, records, assets, and property of the credit union.

(2) The liquidating agent shall proceed to convert the assets to cash, collect all debts due to the credit union and wind up its affairs in accordance with the instructions and procedures issued by the ~~((supervisor))~~ director. If a liquidating agent agrees to absorb and serve the membership of a distressed credit union the ~~((supervisor))~~ director may approve a pooling of assets and liabilities rather than a distribution of assets.

(3) The liquidating agent shall cause to be published notice of liquidation once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the liquidating credit union is located. The notice of liquidation shall inform creditors of the liquidating credit union how to make a claim upon the liquidating agent and that if a claim is not made upon the liquidating agent within thirty days of the last date of publication the creditor's claim shall be barred. The liquidating agent

shall provide personal notice of liquidation to the creditors of record informing them that if they fail to make a claim upon the liquidating agent within thirty days of the service of the notice, the creditor's claim shall be barred. If a creditor fails to make a claim upon the liquidating agent within the times required to be specified in the notices of liquidation the creditor's claim shall be barred. All contingent liabilities of the liquidated credit union shall be discharged upon the ~~((supervisor's))~~ director's order to liquidate the credit union. The liquidating agent shall, upon completion, certify to the ~~((supervisor))~~ director that the distribution or pooling of assets of the credit union is complete.

Sec. 220. RCW 31.12.695 and 1987 c 338 s 8 are each amended to read as follows:

(1) For purposes of this section the merging credit union is the credit union whose charter ceases to exist upon merging with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merging with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the ~~((supervisor))~~ director and in accordance with requirements the ~~((supervisor))~~ director may prescribe. The merger shall be approved by two-thirds majority vote of the board of each credit union and two-thirds majority vote of those members of the merging credit union voting on the merger at a special membership meeting called by the merging credit union board or by mail ballot as provided in RCW 31.12.195(4). The requirement of approval by the members of the merging credit union may be waived if in the ~~((supervisor's))~~ director's opinion the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger shall inform creditors of the merging credit union how to make a claim on the continuing credit union and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication creditors' claims that are not known by the continuing credit union may be barred. Unless a claim is filed as requested by the notice, or unless the debt or obligation is known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger the charter of the merging credit union ceases to exist.

Sec. 221. RCW 31.12.705 and 1984 c 31 s 72 are each amended to read as follows:

(1) A credit union chartered under the laws of this state may convert itself into a federal credit union chartered under the laws of the United States as authorized by the federal credit union act. The conversion shall be approved by two-thirds majority vote of the members present at any regular or special membership meeting called for that purpose by the board. The meeting shall be held within thirty days of being called and the secretary shall notify the members and the ~~((supervisor))~~ director of the meeting and its purpose as provided by the bylaws at least twenty days prior to the meeting.

(2) If the conversion is approved by the members a copy of the resolution certified by the board shall be filed with the ~~((supervisor))~~ director within ten days of approval. The board may effect the conversion from a state-chartered credit union to a federal-chartered credit union upon terms agreed by the board and the proper federal authorities as provided by federal laws, rules, and regulations.

(3) A certified copy of the federal credit union charter or authorization issued to the credit union by the proper federal authority shall be filed in the ~~((supervisor's))~~ director's office and thereupon the state-chartered credit union ceases to exist except for the purpose of winding up its affairs and prosecuting or defending any litigation by or against the state-chartered credit union. For all other purposes the credit union is converted into a federal-chartered credit union and the state-chartered credit union may execute, acknowledge, and deliver to the successor federal credit union the instruments of transfer, conveyance, and assignment that are necessary or desirable to complete the conversion, and the property, tangible or intangible, and all rights, titles, and interests that are agreed to by the board and the proper federal authorities.

(4) Procedures, similar to those contained in subsections (1) through (3) of this section, prescribed by the ~~((supervisor))~~ director shall be followed when a credit union chartered under the laws of this state merges with or converts to a credit union chartered under the laws of another state.

Sec. 222. RCW 31.12.715 and 1984 c 31 s 73 are each amended to read as follows:

(1) A federal credit union located and conducting business in this state which becomes inoperative because of a change in the laws under which it is chartered or which is authorized to dissolve or convert to a state-chartered credit union in accordance with federal law may convert into a state-chartered credit union.

(2) The board of the federal credit union shall file with the ~~((supervisor))~~ director proposed articles of incorporation and proposed bylaws, as provided by this chapter for organizing a new state-chartered credit union. If approved by the ~~((supervisor))~~ director the federal-chartered credit union shall become a state-chartered credit union under the laws of this state and the assets and liabilities of the credit union vest in and become the property of the successor state-chartered credit union subject to all existing liabilities against the federal-chartered credit union. Shareholders and members of the federal credit union

may become shareholders and members of the successor state-chartered credit union.

(3) Procedures, similar to those contained in subsections (1) and (2) of this section, prescribed by the ~~((supervisor))~~ director shall be followed when a credit union chartered under the laws of another state wishes to merge with or convert to a credit union chartered under the laws of this state.

Sec. 223. RCW 31.12.725 and 1984 c 31 s 74 are each amended to read as follows:

(1) At a meeting specially called for the purpose of liquidation, upon the recommendation of at least two-thirds of the total members of the board of a credit union, the members of a credit union may by a two-thirds vote of the members present elect to liquidate the credit union.

(2) Upon a vote to liquidate under subsection (1) of this section, a committee of three shall be elected to liquidate the assets of the credit union. The committee shall act under the direction of the ~~((supervisor))~~ director and may be reasonably compensated by the board of the credit union. Each share of the credit union shall be entitled to its proportionate part of the assets in liquidation after all deposits and debts have been paid. The assets of the liquidating credit union shall not be subject to contingent liabilities. Upon distribution of the assets, the credit union shall cease to exist except for the purpose of discharging existing liabilities and obligations.

(3) Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the date of the final dividend shall be deposited, together with all the books and papers of the credit union, with the ~~((supervisor))~~ director. The ~~((supervisor))~~ director may one year after receipt destroy such records, books, and papers as, in the ~~((supervisor's))~~ director's judgment, are obsolete or unnecessary for future reference. The funds may be deposited in one or more trust companies, mutual savings banks, savings and loan associations, or national or state banks to the credit of the ~~((supervisor))~~ director in trust for the members of the liquidating credit union entitled to the funds. The ~~((supervisor))~~ director may pay to a person entitled to it that person's portion of the funds upon the receipt of satisfactory evidence that the person is entitled to a portion of the funds. In case of doubt or of conflicting claims, the ~~((supervisor))~~ director may require an order of the superior court of the county in which the credit union was located authorizing and directing the payment of the funds. The ~~((supervisor))~~ director may apply the interest earned by the funds toward defraying the expenses incurred in the holding and paying of the funds. Five years after the receipt of the funds, the funds still remaining with the ~~((supervisor))~~ director shall be escheated to the state.

Sec. 224. RCW 31.12.905 and 1984 c 31 s 81 are each amended to read as follows:

This act shall take effect on July 1, 1984. The ~~((supervisor of savings and loans))~~ director may immediately take such steps as are necessary to ensure that this act is implemented on its effective date.

Sec. 225. RCW 31.12A.010 and 1985 c 7 s 98 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings indicated.

(1) "Assessment" means the amount levied by the association against its members in order to carry out its stated purposes.

(2) "Association" means the credit union share guaranty association created in RCW 31.12A.020.

(3) "Board" means board of directors of the guaranty association.

(4) "Contracted guarantees" means those liabilities specifically agreed to by the association for providing assistance to member credit unions or for indemnifying any other entity against loss because of its participation in the absorption or liquidation of a distressed member credit union.

(5) "Credit union" means a credit union organized and authorized under laws contained in chapter 31.12 RCW, as now or hereafter amended.

(6) "Director" means the director of financial institutions.

(7) "Initial member" means a member qualified by the ~~((supervisor))~~ director within sixty days after September 1, 1975, but not yet ratified by the board.

~~((7))~~ (8) "Member" means a member of the guaranty association, ratified by the board.

~~((8))~~ (9) "Share account" of a credit union shareholder includes the share and/or deposit accounts and the share and/or deposit certificates of which the shareholder is owner of record with the credit union.

~~((9))~~ (10) "Shareholder" includes both members and nonmembers of a credit union, who have either shares and/or deposits in the credit union, including deposits of deferred compensation as referred to in RCW 31.12.125(10).

~~((10))~~ "Supervisor" means the state supervisor of the division of savings and loan associations, or his successor in the event of a departmental restructuring.)

(11) "Transfer" means entering on the credit union's books of account a decrease to one account and a corresponding increase to another account.

Sec. 226. RCW 31.12A.040 and 1982 c 67 s 4 are each amended to read as follows:

(1) Every credit union meeting the following qualifications is eligible for membership in the association:

(a) Must be in business as a duly authorized credit union.

(b) Must be operating in compliance with applicable laws and the rules ~~((and regulations))~~ of the ~~((supervisor))~~ director.

(c) Must not be in the process of liquidation, either voluntary or involuntary.

(2) Prior to the operative date stated in subsection (3) of this section, application for membership shall be made by the credit union in writing to the

association on forms designed and furnished by the association, and filed with the secretary. An application fee, as fixed in the bylaws, payable to the order of the association, shall accompany each such application. If the application is found to be:

(a) Complete, and the applicant qualified for membership: The association shall issue and deliver to the applicant a certificate of membership in appropriate form.

(b) Incomplete: The association shall require the applicant to refile said application in its entirety within thirty days.

(c) Not qualified: The association shall notify said applicant within thirty days of filing: PROVIDED, That said applicant will be allowed to meet qualification standards under conditions as provided in the bylaws of the association.

(3) The initial membership of the association shall be comprised of all those credit unions qualified under subsection (1) of this section by the ~~((supervisor))~~ director within sixty days after September 1, 1975, with final ratification by the initial board of directors subject to full compliance of all qualifications for membership within one hundred twenty days after September 1, 1975.

(4) Membership in either this association or the federal share insurance program under the national credit union administration shall be mandatory.

Sec. 227. RCW 31.12A.050 and 1983 c 48 s 2 are each amended to read as follows:

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

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

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

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

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

(2) Sums specified in subsection (1) of this section may be offset from the statutory transfer requirement to the guaranty fund and shall be retained in the credit union share guaranty contingency reserve as an integral part of its guaranty fund until such time and if necessary to be drawn for the purposes set forth in this chapter.

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

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

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

(6) Except for a credit union merging with a member credit union, any credit union terminating membership in the association shall be assessed its pro rata share of the difference, if any, between the association's current liability for contracted guarantees and the amount from previous assessments currently held for contracted guarantees by the association. Such difference shall be determined by the (~~supervisor~~) director at the time the membership is terminated. If the

amount of the assessment exceeds the amount of the actual obligation when finalized, the excess shall be refunded in the same proportion as paid.

Sec. 228. RCW 31.12A.070 and 1975 1st ex.s. c 80 s 9 are each amended to read as follows:

(1) Within thirty days after the operative date of this chapter, the (~~supervisor~~) director shall call a first meeting of the initial members of the association for the purpose of electing directors and shall give written notice of the time and place of such meeting. The meeting shall be held within sixty days after such operative date, at a place in this state selected by the (~~supervisor~~) director and of convenience to members. The (~~supervisor~~) director shall preside at the meeting.

(2) The initial board of directors shall meet within thirty days after the first meeting of members, to elect officers, consider bylaws, and transact such other business relating to the association as may properly come before it.

Sec. 229. RCW 31.12A.080 and 1975 1st ex.s. c 80 s 10 are each amended to read as follows:

(1) The first bylaws of the association shall be as adopted by its initial board, and the board shall so adopt bylaws within three months after the association has become operative. All bylaws, and amendments thereof, shall be promptly filed with, and are subject to the approval of, the (~~supervisor~~) director, and shall be approved if found by the (~~supervisor~~) director to be reasonable, and fair and equitable to the association and its members. Among the customary, useful, and desirable provisions the bylaws shall provide:

- (a) For the date and place of holding the annual meeting of members.
- (b) Procedure for holding of special meetings.
- (c) For voting privilege.
- (d) For quorum requirements.
- (e) For qualifications of directors, for procedures for nomination, election and removal of directors; and number, term and compensation of directors.
- (f) For the bonding of any individual who may be expected to handle funds for the association.
- (g) Qualifications for membership.
- (h) Duties of officers.
- (i) Application fees and assessment fees.
- (j) Fines, if any.
- (k) Coverage loss limits.
- (l) Powers and duties of the board.
- (m) Types of investments, liquidity, and normal operating sufficiency.
- (n) Such other regulations as may be deemed necessary.

(2) After adoption of initial bylaws by the board, the bylaws shall be subject to amendments only by vote of the members. The secretary-treasurer of the association shall promptly file all bylaws and amendments with the (~~supervisor~~) director. No bylaws or amendments thereto, except the adoption of initial

bylaws, shall be effective until approved by the (~~supervisor~~) director as hereinabove in this section provided.

Sec. 230. RCW 31.12A.090 and 1982 c 67 s 7 are each amended to read as follows:

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

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

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

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

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

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

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

Sec. 231. RCW 31.12A.100 and 1975 1st ex.s. c 80 s 12 are each amended to read as follows:

(1) Upon collection in full of the amount assessed against members as provided for in RCW 31.12A.090, or other provision satisfactory to the board, the association shall conclude the liquidation subject to acceptance by the ~~((supervisor))~~ director.

(2) If illiquid holdings of the liquidating member have not been included as assets in determining net loss to share accounts, as provided for in RCW 31.12A.090(1), the association shall be subrogated to all rights of shareholders with respect to such holdings and to the extent of the value thereof so excluded and reflected in the assessment of association members; and the officers of the liquidating member or other persons having authority with respect thereto shall execute such conveyances, assignments, or other documents as may be requested by the association to facilitate recovery by the association in due course of the amount of its interest in such assets or so much thereof as may in fact be recoverable. The association shall have the right to bring and maintain suit or other action in its own name for the enforcement of any right of the insolvent member or its shareholders with respect to any such asset.

Sec. 232. RCW 31.12A.120 and 1975 1st ex.s. c 80 s 14 are each amended to read as follows:

(1) Within sixty days after expiration of each calendar year, the association shall render a report in writing of its financial affairs and transactions for the year, and of its financial condition at year-end. The association shall furnish a copy of the report to each member and to the ~~((supervisor))~~ director.

(2) The financial affairs of the association shall be subject to examination by the ~~((supervisor))~~ director at such intervals as he or she may deem advisable in relation to the extent of the association's activities. The cost of examination shall be borne by the association. In lieu of his or her own examination, the ~~((supervisor))~~ director may accept the report of any competent accountant, satisfactory to the ~~((supervisor))~~ director.

Sec. 233. RCW 31.12A.140 and 1975 1st ex.s. c 80 s 16 are each amended to read as follows:

There shall be no separate and individual liability on the part of and no cause of action of any nature shall arise against any member insurer, agents or employees of the association, the board of directors, or the ~~((supervisor))~~ director

or his or her representatives, for any action taken by them in the performance of their powers and duties under this chapter.

Sec. 234. RCW 31.13.030 and 1977 ex.s. c 207 s 2 are each amended to read as follows:

Notwithstanding any other provision of law, the central credit union may adopt bylaws enabling it to exercise any of the powers, as now existing or hereafter conferred upon, a federally chartered central credit union doing business in this state which is subject to the regulations of the administrator of the national credit union administration, or the successor or successors of him or her, if the ((~~supervisor~~)) director finds that the exercise of such power:

- (1) Serves the public convenience and advantage; and
- (2) Equalizes and maintains the quality of competition between the state chartered central credit union and any federally chartered central credit union.

Sec. 235. RCW 31.24.080 and 1963 c 162 s 8 are each amended to read as follows:

The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled: PROVIDED, That no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the ((~~state supervisor of banking~~)) director to examine the corporation or the obligation of the corporation to make reports as provided in RCW 31.24.120, shall be made: PROVIDED, FURTHER, That no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any charge in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each membership affected by such amendment.

Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his or her approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

Sec. 236. RCW 31.24.120 and 1963 c 162 s 12 are each amended to read as follows:

The corporation shall be examined at least once annually by the ~~((state supervisor of banking))~~ director and shall make reports of its condition not less than annually to ~~((said state supervisor of banking))~~ the director and more frequently upon call of the ~~((state supervisor of banking))~~ director, who in turn shall make copies of such reports available to the state insurance commissioner and the governor; and the corporation shall also furnish such other information as may from time to time be required by the ~~((state supervisor of banking))~~ director and secretary of state. The corporation shall pay the actual cost of ~~((said))~~ the examinations. The ~~((state supervisor of banking))~~ director shall exercise the same power and authority over corporations organized under this chapter as is now exercised over banks and trust companies by the provisions of the Title 30 RCW, where the provisions of Title 30 RCW are not in conflict with this chapter.

Sec. 237. RCW 31.30.010 and 1986 c 284 s 1 are each amended to read as follows:

The director of ~~((general administration))~~ financial institutions, by rule, shall provide for the establishment, incorporation, operation, and regulation of a borrower-owned corporate entity to be known as the Washington land bank. The Washington land bank shall be patterned after the federal land banks organized under the Farm Credit Act of 1971, as amended, within state constitutional limits. The Washington land bank shall be organized by eligible borrowers and shall be designed to accomplish the objective of furnishing sound, adequate, and constructive long-term credit to farmer and rancher borrowers in the state of Washington. For purposes of this chapter, "farmer and rancher" includes producers of privately cultured aquatic products.

Sec. 238. RCW 31.30.020 and 1986 c 284 s 2 are each amended to read as follows:

The Washington land bank shall be a body corporate and, subject to regulation as provided by rules promulgated by the director of ~~((general administration))~~ financial institutions, shall have the power to:

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under this chapter or rules promulgated pursuant to RCW 31.30.010.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make and participate in loans, make commitments for credit, accept advance payments, and provide services and other assistance as authorized in this chapter, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice-president, a secretary, and a treasurer, and provide for such other officers, employees, and

agents as may be necessary, define their duties, and require surety bonds or make other provision against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations of such character, terms, conditions, and rates of interest as may be determined.

(11) Participate with one or more other lenders, including federal land banks existing under the Farm Credit Act of 1971, as amended, in loans that the corporation is authorized to make under this chapter.

(12) Deposit its securities and its current funds with any member bank of the federal reserve system or any insured state nonmember bank as defined in section 2 of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed.

(13) Buy and sell obligations of or insured by the United States or of any agency thereof, and, as may be authorized by its board of directors and by rule promulgated pursuant to RCW 31.30.010, (a) sell to other lenders interests in loans, (b) buy from other lenders interests in loans which the corporation could make directly under this chapter, and (c) make other investments.

(14) Conduct studies and make and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the corporation.

Sec. 239. RCW 31.30.150 and 1987 c 420 s 5 are each amended to read as follows:

(1) The Washington land bank shall be examined by the ~~((department of general administration, division of banking))~~ director of financial institutions, at such times as the ~~((supervisor))~~ director may determine, but in no event less than once each year. Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and an appraisal of the effectiveness of the institution's management and application of policies for the carrying out ~~((to))~~ of the requirements of chapter 31.30 RCW, and servicing all eligible borrowers. At the direction of the ~~((supervisor))~~ director, the ~~((division of banking))~~ department of financial institutions shall examine the condition of any organization with which the Washington land bank contemplates making a loan or discounting paper. For the purposes of this chapter, bank analysts shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under Title 30 RCW, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and

shall have the same powers and privileges as are vested in such examiners by law.

(2) The Washington land bank shall make and publish an annual report of condition. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as may be required by the board of directors. Such financial statements shall be audited by an independent certified public accountant.

Sec. 240. RCW 31.30.160 and 1987 c 420 s 6 are each amended to read as follows:

The Washington land bank shall make at least three regular reports each year to the ~~((supervisor))~~ director, as of the dates designated, according to form prescribed, verified by the president, vice-president, or secretary and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of the bank. Each such report in condensed form, to be prescribed by the ~~((supervisor))~~ director, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be no newspaper published in such place, then in some newspaper published in the same county. The Washington land bank shall also make such special reports as the ~~((supervisor))~~ director shall call for.

Sec. 241. RCW 31.30.170 and 1987 c 420 s 7 are each amended to read as follows:

Every regular report shall be filed with the ~~((supervisor))~~ director within thirty days from the date of issuance of the notice therefor and proof of publication of such report shall be filed with the ~~((supervisor))~~ director within forty days from such date. Every special report shall be filed with the ~~((supervisor))~~ director within such time as shall be specified in the notice therefor.

Failure of the Washington land bank to file any report, required to be filed as aforesaid within the time herein specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state.

Sec. 242. RCW 31.30.180 and 1987 c 420 s 8 are each amended to read as follows:

The ~~((supervisor))~~ director of financial institutions shall collect from the Washington land bank for application and investigations and for each examination of its condition a fee as set by ~~((applicable regulation of the division of banking))~~ rule.

Sec. 243. RCW 31.30.190 and 1987 c 420 s 9 are each amended to read as follows:

(1) All examination reports and all information obtained by the ~~((supervisor))~~ director of financial institutions and the ~~((supervisor's))~~ director's staff in conducting examinations of the Washington land bank 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))~~ director may furnish all or any part of examination reports prepared by the ~~((supervisor's))~~ director's office to:

(a) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the ~~((supervisor))~~ director furnishes any examination report to officials empowered to investigate criminal charges, the ~~((supervisor))~~ director may only furnish that part of the report which is necessary and pertinent to the investigation, and the ~~((supervisor))~~ director may do this only after notifying the Washington land bank and any customer of the Washington land 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;

(b) The Washington land bank;

(c) The attorney general in his or her role as legal advisor to the ~~((supervisor))~~ director;

(d) A person or organization officially connected with the Washington land bank as officer, director, attorney, auditor, or independent attorney or independent auditor.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the ~~((division of banking))~~ department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the ~~((division of banking))~~ department of financial institutions is designed for use in the supervision of the Washington land bank. The report shall remain the property of the ~~((supervisor))~~ director and will be furnished to the Washington land bank for its confidential use. Under no circumstances shall the Washington land 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 Washington land bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank.

(5) Examination reports and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations 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))~~ director,

petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the ~~((supervisor))~~ director.

(7) This section shall not apply to investigation reports prepared by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff concerning an application for establishment of the Washington land bank: PROVIDED, That the ~~((supervisor))~~ director may adopt rules making confidential portions of the reports if in the ~~((supervisor's))~~ director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the ~~((supervisor))~~ director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 244. RCW 31.30.200 and 1987 c 420 s 10 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may issue and serve upon the Washington land bank a notice of charges if in the opinion of the ~~((supervisor))~~ director, the Washington land bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting its business;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the ~~((supervisor))~~ director in connection with the granting of any application or other request by the bank or any written agreement made with the ~~((supervisor))~~ director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the ~~((supervisor))~~ director at the request of the bank.

Unless the bank shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ~~((supervisor))~~ director finds that any violation or practice specified in the notice of charges has been established, the ~~((supervisor))~~ director may issue and serve upon the bank an order to cease and desist from the violation or practice. The order may require the bank and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank except that a cease and desist

order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the ~~((supervisor))~~ director or a reviewing court.

Sec. 245. RCW 31.30.210 and 1987 c 420 s 11 are each amended to read as follows:

Whenever the ~~((supervisor))~~ director determines that the acts specified in RCW 31.30.200 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, the ~~((supervisor))~~ director may also issue a temporary order requiring the bank to cease and desist from the violation or practice. The order shall become effective upon service on the bank and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 31.30.180 pending the completion of the administrative proceedings under the notice and until such time as the ~~((supervisor))~~ director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank pursuant to RCW 31.30.180.

Sec. 246. RCW 31.30.230 and 1987 c 420 s 13 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued, the ~~((supervisor))~~ director may apply to the superior court of the county of the principal place of business of the bank for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 247. RCW 31.30.240 and 1987 c 420 s 14 are each amended to read as follows:

(1) Any administrative hearing may be held at such place as is designated by the ~~((supervisor))~~ director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the ~~((supervisor))~~ director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the ~~((supervisor))~~ director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceedings an order or orders.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the bank and until the record in the proceeding has been filed as therein provided, the ~~((supervisor))~~ director may at any time modify, terminate, or set aside any order upon such notice and in such manner as deemed proper. Upon filing the record, the ~~((supervisor))~~ director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued

upon consent by filing in the superior court of the county of the principal place of business of the bank within ten days after the date of service of the order a written petition praying that the order of the ~~((supervisor))~~ director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the ~~((supervisor))~~ director and the ~~((supervisor))~~ director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the ~~((supervisor))~~ director except that the ~~((supervisor))~~ director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the ~~((supervisor))~~ director unless specifically ordered by the court.

Sec. 248. RCW 31.30.250 and 1987 c 420 s 15 are each amended to read as follows:

The ~~((supervisor))~~ director may serve upon a director, officer, or employee of the Washington land bank a written notice of the ~~((supervisor's))~~ director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank whenever:

(1) In the opinion of the ~~((supervisor))~~ director any director, officer, or employee of the bank has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank; or

(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as director, officer, or employee; and

(2) The ~~((supervisor))~~ director determines that:

(a) The bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its investors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee.

Sec. 249. RCW 31.30.260 and 1987 c 420 s 16 are each amended to read as follows:

A notice of an intention to remove a director, officer, or employee from office or to prohibit participation in the conduct of the affairs of the bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later ~~((then than))~~ than thirty days after the date of

service of the notice unless an earlier or later date is set by the ~~((supervisor))~~ director at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the ~~((supervisor))~~ director finds that any of the grounds specified in the notice have been established, the ~~((supervisor))~~ director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank as the ~~((supervisor))~~ director may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the ~~((supervisor))~~ director or a reviewing court.

Sec. 250. RCW 31.30.270 and 1987 c 420 s 17 are each amended to read as follows:

If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of the bank less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of the bank are removed under this chapter, the ~~((supervisor))~~ director shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

Sec. 251. RCW 31.35.010 and 1990 c 134 s 1 are each amended to read as follows:

The legislature finds and declares that nondepository agricultural lenders can enhance their access to working capital for the purpose of financing agricultural borrowers by using the United States farmers home administration loan guaranty program. The farmers home administration loan guaranty program provides financing to agricultural borrowers needing working capital and longer term financing for the purchase of real estate, agricultural production expenses, debt refinancing, equipment, and the purchase of other fixed assets. Loans can be made to agricultural borrowers by nondepository lenders and guaranteed by the farmers home administration only if the state provides an ongoing opportunity for examination of such entities to confirm good lending practices and solvency.

It is the intent of the legislature to empower the ~~((supervisor of banking))~~ director of financial institutions to examine nondepository agricultural lenders for the purpose of allowing such lenders to qualify for participation in the farmers home administration loan guaranty program.

Sec. 252. RCW 31.35.020 and 1990 c 134 s 2 are each amended to read as follows:

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

(1) "Agricultural lender" means a Washington corporation incorporated under Title 23B or 24 RCW and qualified as such under this chapter and the jurisdiction of the federal government agency sponsoring the loan guaranty program.

(2) (~~"Supervisor" means the state supervisor of banking~~) "Director" means the director of financial institutions.

(3) "Loan guaranty program" means the farmers home administration loan guaranty program, or any other government program for which the agricultural lender is eligible and which has as its function the provision, facilitation, or financing of agricultural business operations.

Sec. 253. RCW 31.35.030 and 1990 c 134 s 3 are each amended to read as follows:

(1) The (~~supervisor~~) director shall administer this chapter. The (~~supervisor~~) director may issue orders and adopt rules that, in the opinion of the (~~supervisor~~) director, 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) An application filed with the (~~supervisor~~) director under this chapter shall be in such form and contain such information as required by the (~~supervisor~~) director by rule and be consistent with the requirements of the loan guaranty program.

(3) After the (~~supervisor~~) director is satisfied that the applicant has satisfied all the conditions necessary for approval, the (~~supervisor~~) director shall issue a license to the applicant authorizing it to be an agricultural lender under this chapter.

(4) Any change of control of an agricultural lender shall be subject to the approval of the (~~supervisor~~) director. 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 an agricultural lender or the power to elect or control the election of a majority of the board of directors of an agricultural lender.

(5) The (~~supervisor~~) director may deny, suspend, or revoke a license if the agricultural lender violates any provision of this chapter or any rules promulgated pursuant to this chapter.

Sec. 254. RCW 31.35.050 and 1990 c 134 s 5 are each amended to read as follows:

(1) The ~~((supervisor))~~ director is authorized to charge a fee for the estimated direct and indirect costs for examination and supervision by the ~~((supervisor))~~ director of an agricultural lender or a subsidiary of an agricultural lender. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW ~~((43.19.095))~~ 43.320.110.

Sec. 255. RCW 31.35.060 and 1990 c 134 s 6 are each amended to read as follows:

(1) An agricultural lender shall keep books, accounts, and other records in such form and manner as required by the ~~((supervisor))~~ director. These records shall be kept at such place and shall be preserved for such length of time as specified by the ~~((supervisor))~~ director by rule.

(2) Not more than ninety days after the close of each calendar year, or within a period specified by the ~~((supervisor))~~ director, an agricultural lender shall file with the ~~((supervisor))~~ director 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))~~ director may require.

(3) Each agricultural lender shall provide for a loan loss reserve sufficient to cover projected loan losses that are not guaranteed by the United States government or any agency thereof.

Sec. 256. RCW 31.35.070 and 1990 c 134 s 7 are each amended to read as follows:

(1) The ~~((supervisor, the deputy supervisor, or a bank examiner))~~ director shall visit each agricultural lender at least every twenty-four months for the purpose of assuring that the agricultural lender remains in compliance with and qualified for the loan guaranty program.

(a) The ~~((supervisor))~~ director may accept timely audited financial statements and other timely reports the ~~((supervisor))~~ director determines to be relevant and accurate as part of a full and complete examination of the agricultural lender. The ~~((supervisor))~~ director shall make an independent review of loans guaranteed by the loan guaranty program.

(b) The agricultural lender shall be exempt from examination under this subsection if it terminates its activities under the loan guaranty program and no loans guaranteed by the loan guaranty program remain on the books. This exemption becomes effective upon notification to the ~~((supervisor))~~ director. The ~~((supervisor))~~ director shall confirm termination of activities under the loan guaranty program with the appropriate federal agency.

(c) All examination reports and all information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations of an agricultural lender are confidential to the same extent bank examinations are confidential under RCW 30.04.075.

(d) All examination reports may be shared with other state or federal agencies consistent with chapter 30.04 RCW.

(2) A director, officer, or employee of an agricultural lender or of a subsidiary of an agricultural lender being examined by the ~~((supervisor))~~ director or a person having custody of any of the books, accounts, or records of the agricultural lender or of the subsidiary shall facilitate the examination so far as it is in his or her power to do so.

(3) If in the ~~((supervisor's))~~ opinion of the director it is necessary in the examination of an agricultural lender or of a subsidiary of an agricultural lender, the ~~((supervisor))~~ director may retain any certified public accountant, attorney, appraiser, or other person to assist the ~~((supervisor))~~ director. The agricultural lender being examined shall pay the fees of a person retained by the ~~((supervisor))~~ director under this subsection.

Sec. 257. RCW 31.35.080 and 1990 c 134 s 8 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the ~~((supervisor))~~ director on any form required by the ~~((supervisor))~~ director or during any examination; or

(c) Prevention of fraud and undue influence within an agricultural lender.

(2) A violation of any provision of this chapter or any rule of the ~~((supervisor))~~ director adopted under this chapter by an agent, employee, officer, or director of the agricultural lender shall be punishable by a fine, established by the ~~((supervisor))~~ director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. All fines shall be credited to the banking examination fund.

(3) The ~~((supervisor))~~ director may issue and serve upon an agricultural lender a notice of charges if, in the opinion of the ~~((supervisor))~~ director, the agricultural lender is violating or has violated the law, rule, or any condition imposed in writing by the ~~((supervisor))~~ director or any written agreement made by the ~~((supervisor))~~ director.

(a) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the agricultural lender. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the ~~((supervisor))~~ director at the request of the agricultural lender.

Unless the agricultural lender appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of consent or if, upon the record made at the hearing, ~~((the supervisor))~~ the director finds that any violation or practice specified in the notice of charges has been established, the ~~((supervisor))~~ director

may issue and serve upon the agricultural lender an order to cease and desist from the violation or practice. The order may require the agricultural lender and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the agricultural lender to take affirmative action to correct the conditions resulting from the violation or practice.

(b) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the agricultural lender concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the (~~supervisor~~) director or a reviewing court.

Sec. 258. RCW 31.35.090 and 1990 c 134 s 9 are each amended to read as follows:

If, in the opinion of the (~~supervisor~~) director, an agricultural lender violates or there is reasonable cause to believe that an agricultural lender is about to violate any provision of this chapter or any rule adopted under this chapter, the (~~supervisor~~) director may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, (~~for~~) or preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the agricultural lender or the agricultural lender's assets.

Sec. 259. RCW 31.35.100 and 1990 c 134 s 10 are each amended to read as follows:

All agricultural lenders shall notify their members at the time of membership and annually thereafter that their investment in the agricultural lender, although regulated by the (~~supervisor~~) director, is not insured, guaranteed, or protected by any federal or state agency.

Sec. 260. RCW 31.35.900 and 1990 c 134 s 11 are each amended to read as follows:

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 farmers home administration, is contrary to the intent and purposes of the loan guaranty program, the (~~supervisor~~) director 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.

Sec. 261. RCW 31.40.010 and 1989 c 212 s 1 are each amended to read as follows:

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))~~ director of financial institutions, 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.

Sec. 262. RCW 31.40.020 and 1989 c 212 s 2 are each amended to read as follows:

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

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) ~~("Supervisor" means the state supervisor of banking))~~ "Director" means the director of financial institutions.

Sec. 263. RCW 31.40.030 and 1989 c 212 s 3 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall administer this chapter. The ~~((supervisor))~~ director may issue orders and adopt rules that, in the opinion of the ~~((supervisor))~~ director, 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))~~ director issues an order or a license under this chapter, the ~~((supervisor))~~ director may impose conditions that are necessary, in the opinion of the ~~((supervisor))~~ director, to carry out the purposes of this chapter.

(3) An application filed with the ~~((supervisor))~~ director under this chapter shall be in such a form and contain such information as the ~~((supervisor))~~ director may require.

(4) Any change of control of a licensee shall be subject to the approval of the ~~((supervisor))~~ director. 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.

Sec. 264. RCW 31.40.050 and 1989 c 212 s 5 are each amended to read as follows:

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))~~ director, the ~~((supervisor))~~ director shall

approve an application for a license if, and only if, the ((~~supervisor~~)) director 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~~)) director 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 RCW 31.40.080;

(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.

Sec. 265. RCW 31.40.060 and 1989 c 212 s 6 are each amended to read as follows:

(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~~)) director 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.

Sec. 266. RCW 31.40.070 and 1989 c 212 s 7 are each amended to read as follows:

(1) The ~~((supervisor))~~ director 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))~~ director 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))~~ director shall be paid at the time the application is filed with the ~~((supervisor))~~ director.

(3) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW ~~((43.19.095))~~ 43.320.110.

Sec. 267. RCW 31.40.080 and 1989 c 212 s 8 are each amended to read as follows:

(1) A licensee shall keep books, accounts, and other records in such a form and manner as the ~~((supervisor))~~ director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the ~~((supervisor))~~ director may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the ~~((supervisor))~~ director, a licensee shall file with the ~~((supervisor))~~ director 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))~~ director 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.

Sec. 268. RCW 31.40.090 and 1989 c 212 s 9 are each amended to read as follows:

(1) The ~~((supervisor))~~ director shall examine each licensee not less than once each year.

(2) The ~~((supervisor))~~ director 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))~~ director 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)) director's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the ((supervisor)) director may retain any certified public accountant, attorney, appraiser, or other person to assist the ((supervisor)) director. The licensee being examined shall pay the fees of a person retained by the ((supervisor)) director under this subsection.

Sec. 269. RCW 31.40.100 and 1989 c 212 s 10 are each amended to read as follows:

If the ((supervisor)) director denies an application, the ((supervisor)) director shall provide the applicant with a written statement explaining the basis for the denial.

Sec. 270. RCW 31.40.110 and 1989 c 212 s 11 are each amended to read as follows:

(1) The ((supervisor)) director 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)) director on any form required by the ((supervisor)) director or during any examination requested by the ((supervisor)) director; 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)) director adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the ((supervisor)) director, 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)) banking examination fund.

Sec. 271. RCW 31.40.120 and 1989 c 212 s 12 are each amended to read as follows:

If, in the opinion of the ((supervisor)) director, 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)) director 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.

Sec. 272. RCW 31.40.130 and 1989 c 212 s 13 are each amended to read as follows:

The ((supervisor)) director 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.

Sec. 273. RCW 31.40.900 and 1989 c 212 s 16 are each amended to read as follows:

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))~~ director 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.

Sec. 274. RCW 31.45.010 and 1993 c 143 s 1 are each amended to read as follows:

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

(1) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

(3) "Licensee" means a check casher or seller licensed by the ~~((supervisor))~~ director to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

(4) ~~("Supervisor" means the supervisor of banking))~~ "Director" means the director of financial institutions.

Sec. 275. RCW 31.45.020 and 1991 c 355 s 2 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Any bank, trust company, savings bank, savings and loan association, or credit union;

(b) The cashing of checks, drafts, or money orders by any corporation, partnership, association, or person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the ~~((supervisor))~~ director, the ~~((supervisor))~~ director may exempt a corporation, partnership, association, or other person from any or

all provisions of this chapter upon a finding by the ~~((supervisor))~~ director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public.

Sec. 276. RCW 31.45.030 and 1993 c 176 s 1 are each amended to read as follows:

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the ~~((supervisor))~~ director in accordance with this chapter.

(2) Each application for a license shall be in writing in a form prescribed by the ~~((supervisor))~~ director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller;

(d) Such other data, financial statements, and pertinent information as the ~~((supervisor))~~ director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the ~~((supervisor))~~ director. Such fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW ~~((43.19.095))~~ 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the ~~((supervisor))~~ director shall require that the licensee file with the ~~((supervisor))~~ director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the ~~((supervisor))~~ director. The ~~((supervisor))~~ director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the ~~((supervisor))~~ director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is

received by the ((~~supervisor~~)) director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(b) In lieu of the surety bond required by this section, the applicant may file with the ((~~supervisor~~)) director a deposit consisting of cash or other security acceptable to the ((~~supervisor~~)) director in an amount equal to the penal sum of the required bond. The ((~~supervisor~~)) director may adopt rules necessary for the proper administration of the security. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

(c) Such security may be sold by the ((~~supervisor~~)) director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the ((~~supervisor~~)) director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the

licensee shall deposit with the ~~((supervisor))~~ director additional security sufficient to meet the amount required by the ~~((supervisor))~~ director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

Sec. 277. RCW 31.45.040 and 1991 c 355 s 4 are each amended to read as follows:

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

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

(b) The applicant has the required bonds.

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

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

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

(5) A license issued in accordance with this chapter remains in force and effect through the remainder of the calendar year following its date of issuance unless earlier surrendered, suspended, or revoked.

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

Sec. 278. RCW 31.45.050 and 1991 c 355 s 5 are each amended to read as follows:

(1) A license may be renewed upon the filing of an application containing such information as the ~~((supervisor))~~ director may require and by the payment of a fee in an amount determined by the ~~((supervisor))~~ director as necessary to cover the costs of supervision. Such fees collected shall be deposited to the credit of the ~~((bank-{banking}))~~ banking examination fund in accordance with

RCW (~~(43.19.095)~~) 43.320.110. The (~~(supervisor)~~) director shall renew the license in accordance with the standards for issuance of a new license.

(2) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the (~~(supervisor)~~) director no less than thirty days before the proposed establishing, closing, or moving of a place of business.

Sec. 279. RCW 31.45.060 and 1991 c 355 s 6 are each amended to read as follows:

(1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the (~~(supervisor)~~) director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records for at least two years.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained at a bank, savings bank, or savings and loan association authorized to do business in the state of Washington.

Sec. 280. RCW 31.45.070 and 1991 c 355 s 7 are each amended to read as follows:

(1) Except for the activities of a pawnbroker as defined in RCW 19.60.010, no licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless such loan business is a properly licensed consumer finance company or industrial loan company office or other lending activity permitted in the state of Washington and is physically separated from the check cashing or selling business in a manner approved by the (~~(supervisor)~~) director.

(2) No licensee may at any time cash or advance any moneys on a postdated check or draft. However, a licensee may cash a check payable on the first banking day following the date of cashing if:

(a) The check is drawn by the United States, the state of Washington, or any political subdivision of the state, or by any department or agency of the state or its subdivisions; or

(b) The check is a payroll check drawn by an employer to the order of its employee in payment for services performed by the employee.

(3) No licensee may agree to hold a check or draft for later deposit. A licensee shall deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information, or that refers to the supervision of the licensee by the state of Washington or any department or official of the state.

(6) Each licensee shall comply with all applicable federal statutes governing currency transaction reporting.

Sec. 281. RCW 31.45.080 and 1991 c 355 s 8 are each amended to read as follows:

(1) All funds received by a licensee or its agents from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose constitute trust funds owned by and belonging to the person from whom they were received or to the person who has paid the checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) All such trust funds shall be deposited in a bank, savings bank, or savings and loan association located in Washington state in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or of its officers, employees, or agents. Such funds are not subject to attachment, levy of execution, or sequestration by order of a court except by a payee, assignee, or holder in due course of a check, draft, or money order sold by a licensee or its agent. Funds in the trust account, together with funds and checks on hand and in the hands of agents held for the account of the licensee at all times shall be at least equal to the aggregate liability of the licensee on account of checks, drafts, money orders, or other commercial paper serving the same purpose that are sold.

(3) The (~~supervisor~~) director shall adopt rules requiring the licensee to periodically withdraw from the trust account the portion of trust funds earned by the licensee from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose. If a licensee has accepted, in payment for a check, draft, money order, or commercial paper serving the same purpose issued by the licensee, a check or draft that is subsequently dishonored, the (~~supervisor~~) director shall prohibit the withdrawal of earned funds in an amount necessary to cover the dishonored check or draft.

(4) If a licensee or its agent commingles trust funds with its own funds, all assets belonging to the licensee or its agent are impressed with a trust in favor of the persons specified in subsection (1) of this section in an amount equal to the aggregate funds that should have been segregated. Such trust continues until

an amount equal to the necessary aggregate funds have been deposited in accordance with subsection (2) of this section.

(5) Upon request of the ~~((supervisor))~~ director, a licensee shall furnish to the ~~((supervisor))~~ director an authorization for examination of financial records of any trust fund account established for compliance with this section.

(6) The ~~((supervisor))~~ director may adopt any rules necessary for the maintenance of trust accounts, including rules establishing procedures for distribution of trust account funds if a license is suspended, terminated, or not renewed.

Sec. 282. RCW 31.45.090 and 1991 c 355 s 9 are each amended to read as follows:

(1) Each licensee shall submit to the ~~((supervisor))~~ director, in a form approved by the ~~((supervisor))~~ director, a report containing financial statements covering the calendar year or, if the licensee has an ~~((a-ant))~~ established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the ~~((supervisor))~~ director may require.

(2) A licensee whose license has been suspended or revoked shall submit to the ~~((supervisor))~~ director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The ~~((supervisor))~~ director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the ~~((supervisor))~~ director to ensure compliance with this chapter.

Sec. 283. RCW 31.45.100 and 1991 c 355 s 10 are each amended to read as follows:

The ~~((supervisor))~~ director may at any time investigate the business and examine the books, accounts, records, and files of any licensee or person who the ~~((supervisor))~~ director has reason to believe is engaging in the business governed by this chapter. The ~~((supervisor))~~ director shall collect from the licensee, the actual cost of the examination.

Sec. 284. RCW 31.45.110 and 1991 c 355 s 11 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may issue and serve upon a licensee a notice of charges if, in the opinion of the ~~((supervisor))~~ director, any licensee:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business governed by this chapter;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the ~~((supervisor))~~ director in connection with the granting of any application or other request by the licensee or any written agreement made with the ~~((supervisor))~~ director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the ((~~supervisor~~)) director at the request of the licensee.

Unless the licensee personally appears at the hearing or by a duly authorized representative, the licensee is deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ((~~supervisor~~)) director finds that any violation or practice specified in the notice of charges has been established, the ((~~supervisor~~)) director may issue and serve upon the licensee an order to cease and desist from the violation or practice. The order may require the licensee and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the licensee to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order becomes effective upon the expiration of ten days after the service of the order upon the licensee concerned, except that a cease and desist order issued upon consent becomes effective at the time specified in the order and remains effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the ((~~supervisor~~)) director or a reviewing court.

Sec. 285. RCW 31.45.120 and 1991 c 355 s 12 are each amended to read as follows:

Whenever the ((~~supervisor~~)) director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the ((~~supervisor~~)) director may also issue a temporary order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the ((~~supervisor~~)) director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110.

Sec. 286. RCW 31.45.140 and 1991 c 355 s 14 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.45.120, the ((~~supervisor~~)) director may apply to the superior court of the county of the principal place of business of the licensee for an injunction.

Sec. 287. RCW 31.45.150 and 1991 c 355 s 15 are each amended to read as follows:

Whenever as a result of an examination or report it appears to the ~~((supervisor))~~ director that:

- (1) The capital of any licensee is impaired;
- (2) Any licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
- (3) Any licensee has suspended payment of its trust obligations;
- (4) Any licensee has refused to submit its books, papers, and affairs to the inspection of the ~~((supervisor))~~ director or the ~~((supervisor's))~~ director's examiner;
- (5) Any officer of any licensee refuses to be examined under oath regarding the business of the licensee;
- (6) Any licensee neglects or refuses to comply with any order of the ~~((supervisor))~~ director made pursuant to this chapter unless the enforcement of such order is restrained in a proceeding brought by such licensee; the ~~((supervisor))~~ director may immediately take possession of the property and business of the licensee and retain possession until the licensee resumes business or its affairs are finally liquidated as provided in RCW 31.45.160. The licensee may resume business upon such terms as the ~~((supervisor))~~ director may prescribe.

Sec. 288. RCW 31.45.160 and 1991 c 355 s 16 are each amended to read as follows:

Whenever the ~~((supervisor))~~ director has taken possession of the property and business of a licensee, the ~~((supervisor))~~ director may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the ~~((supervisor))~~ director retains possession of the property and business of a licensee, the ~~((supervisor))~~ director has the same powers and authority with reference to the licensee as is vested in the ~~((supervisor))~~ director with respect to industrial loan companies, and the licensee has the same rights to hearings and judicial review as are granted to industrial loan companies.

Sec. 289. RCW 31.45.170 and 1991 c 355 s 17 are each amended to read as follows:

Every licensee violating or failing to comply with any provision of this chapter or any lawful direction or requirement of the ~~((supervisor))~~ director is subject, in addition to any penalty otherwise provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation is a separate and distinct offense.

Sec. 290. RCW 31.45.180 and 1991 c 355 s 18 are each amended to read as follows:

Any person who violates or participates in the violation of any provision of the rules or orders of the ((~~supervisor~~)) director or of this chapter is guilty of a misdemeanor.

Sec. 291. RCW 31.45.200 and 1991 c 355 s 20 are each amended to read as follows:

The ((~~supervisor~~)) director has the power, and broad administrative discretion, to administer and interpret the provisions of this chapter to ensure the protection of the public.

Sec. 292. RCW 31.45.900 and 1991 c 355 s 24 are each amended to read as follows:

This act shall take effect January 1, 1992. The ((~~supervisor~~)) director shall take such steps as are necessary to ensure that this act is implemented on its effective date.

Sec. 293. RCW 32.04.020 and 1985 c 56 s 1 are each amended to read as follows:

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

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

The use of the term ((~~"supervisor"~~)) "director" in this title refers to the ((~~supervisor of banking~~)) director of financial institutions.

The use of the word "branch" in this title refers to an established manned place of business or manned mobile facility or other manned facility of a savings bank, other than the principal office, at which deposits may be taken.

Sec. 294. RCW 32.04.030 and 1985 c 56 s 2 are each amended to read as follows:

A savings bank, with the written approval of the ((~~supervisor~~)) director, may establish and operate branches in any place within the state.

A savings bank desiring to establish a branch shall file a written application therefor with the ((~~supervisor~~)) director, who shall approve or disapprove the application.

The ((~~supervisor's~~)) director's approval shall be conditioned on a finding that the resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the capital of the savings bank, including paid-in surplus, guaranty fund, and undivided profits, is less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank. If the application for a branch is not approved, the savings

bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060. The savings bank when delivering the application to the ~~((supervisor))~~ director shall transmit to the ~~((supervisor))~~ director a check in an amount established by rule to cover the expense of the investigation. A savings bank shall not move any branch more than two miles from its existing location without prior approval of the ~~((supervisor))~~ director. Not less than twenty days prior to the date on which it opens any office at which it will transact business, a mutual savings bank shall give written notice to the ~~((supervisor))~~ director of the location and business hours of this office. No such notice shall become effective until it has been delivered to the office of the ~~((supervisor))~~ director.

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

Sec. 295. RCW 32.04.040 and 1985 c 469 s 16 are each amended to read as follows:

Any savings bank may make a written application to the ~~((supervisor))~~ director for leave to change its place of business to another place in the same county. The application shall state the reasons for the proposed change, and shall be signed and acknowledged by a majority of its board of trustees. If the proposed place of business is within the limits of the city or town in which the present place of business of the savings bank is located, the change may be made upon the written approval of the ~~((supervisor))~~ director; if beyond the limits, notice of intention to make the application, signed by two principal officers of the savings bank, shall be published once a week for two successive weeks immediately preceding the application in a newspaper of general circulation in the city of Olympia and shall be published in like manner in a newspaper to be designated by the ~~((supervisor))~~ director, of general circulation in the county in which the present place of business of the bank is located. If the ~~((supervisor))~~ director grants his or her certificate authorizing the change of location, which in his or her discretion he or she may do, the savings bank shall cause the certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section have been fully complied with, the savings bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in the new location which it possessed at its former location.

Sec. 296. RCW 32.04.050 and 1977 ex.s. c 241 s 1 are each amended to read as follows:

A savings bank shall render to the ~~((supervisor))~~ director, in such form as he or she shall prescribe, at least three regular reports each year exhibiting its

resources and liabilities as of such dates as the ~~((supervisor))~~ director shall designate, which shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Every such report, in a condensed form to be prescribed by the ~~((supervisor))~~ director, shall be published once in a newspaper of general circulation, published in the place where the bank is located. A savings bank shall also make such special reports as the ~~((supervisor))~~ director shall call for. A regular report shall be filed with the ~~((supervisor))~~ director within thirty days and proof of the publication thereof within forty days from the date of the issuance of the call for the report. A special report shall be filed within such time as the ~~((supervisor))~~ director shall indicate in the call therefor. A savings bank that fails to file within the prescribed time any report required by this section or proof of the publication of any report required to be published shall be subject to a penalty to the state of fifty dollars for each day's delay, recoverable by a civil action brought by the attorney general in the name of the state.

Sec. 297. RCW 32.04.080 and 1955 c 80 s 2 are each amended to read as follows:

A mutual savings bank may provide for pensions for its disabled or superannuated employees and may pay a part or all of the cost of providing such pensions in accordance with a plan adopted by its board of trustees and approved in writing by the ~~((supervisor of banking))~~ director. Whenever the trustees of the bank shall have formulated and adopted a plan providing for such pensions it shall, within ten days thereafter, transmit the same to the ~~((supervisor of banking))~~ director. The ~~((supervisor of banking))~~ director shall thereupon examine such plan and investigate the feasibility and practicability thereof and within thirty days of the receipt thereof by him or her notify the bank in writing of his or her approval or rejection of the same. After the approval of the ~~((supervisor))~~ director the mutual savings bank shall be authorized and empowered to put such plan into effect. The board of trustees of a savings bank may set aside from current earnings reserves in such amounts as the board shall deem wise to provide for the payment of future pensions.

Sec. 298. RCW 32.04.085 and 1971 ex.s. c 222 s 1 are each amended to read as follows:

Any pension payment or retirement benefits payable by a mutual savings bank to a former officer or employee, or to a person or persons entitled thereto by virtue of service performed by such officer or employee, in the discretion of a majority of all the trustees of such bank, may be supplemented from time to time. Whenever the trustees of the bank shall have formulated and adopted a plan providing for such supplemental payments, within ten days thereafter ~~((said))~~ the trustees shall transmit the same to the ~~((supervisor of banking))~~ director. The ~~((supervisor of banking))~~ director shall thereupon examine such plan and investigate the feasibility and practicability thereof and, within thirty days of the receipt thereof by him or her, notify the bank in writing of his or her

approval or rejection of the same. After the approval of the ~~((supervisor))~~ director the mutual savings bank shall be authorized and empowered to put such plan into effect. The board of trustees of a savings bank may set aside from current earnings, reserves in such amounts as the board shall deem appropriate to provide for the payments of future supplemental payments.

Sec. 299. RCW 32.04.110 and 1955 c 13 s 32.04.110 are each amended to read as follows:

Every trustee, officer, employee, or agent of any savings bank who for the purpose of concealing any fact suppresses any evidence against himself or herself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank, or of the ~~((supervisor of banking))~~ director, or anyone connected with his or her office shall be guilty of a felony.

Sec. 300. RCW 32.04.211 and 1989 c 180 s 4 are each amended to read as follows:

(1) The ~~((supervisor, the deputy supervisor, or a bank examiner))~~ director, assistant director, or an 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))~~ director 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))~~ director 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))~~ director 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))~~ director 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))~~ director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The ~~((supervisor))~~ director 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. 301. RCW 32.04.220 and 1989 c 180 s 5 are each amended to read as follows:

(1) All examination reports and all information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations of mutual savings banks, and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff from other state or federal bank regulatory authorities with whom the ~~((supervisor))~~ director has entered into agreements pursuant to RCW 32.04.211, and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the ~~((supervisor))~~ director may furnish all or any part of examination reports prepared by the ~~((supervisor's))~~ director's office to:

(a) Federal agencies empowered to examine mutual savings banks;

(b) Bank regulatory authorities with whom the ~~((supervisor))~~ director has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the ~~((supervisor))~~ director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the ~~((supervisor))~~ director furnishes any examination report to officials empowered to investigate criminal charges, the ~~((supervisor))~~ director may only furnish that part of the report which is necessary and pertinent to the investigation, and the ~~((supervisor))~~ director may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the ~~((supervisor))~~ director;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the ~~((division of banking))~~ department of financial institutions, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the ~~((division of banking))~~ department of financial institutions is designed for use in the supervision of the mutual savings bank, and the ~~((supervisor))~~ director may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the ~~((supervisor))~~ director and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the ~~((supervisor))~~ director has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.17 RCW.

(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))~~ director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the ~~((supervisor))~~ director.

(7) This section shall not apply to investigation reports prepared by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff concerning an application for a new mutual savings bank or an application for a branch of a

mutual savings bank: PROVIDED, That the ((supervisor)) director may adopt rules making confidential portions of the reports if in the ((supervisor's)) director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the ((supervisor)) director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor.

Sec. 302. RCW 32.04.250 and 1979 c 46 s 1 are each amended to read as follows:

(1) The ((supervisor)) director may issue and serve upon a mutual savings bank a notice of charges if in the opinion of the ((supervisor)) director any mutual savings bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the mutual savings bank;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the ((supervisor)) director in connection with the granting of any application or other request by the mutual savings bank or any written agreement made with the ((supervisor)) director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the mutual savings bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice, unless a later date is set by the ((supervisor)) director at the request of the mutual savings bank.

Unless the mutual savings bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ((supervisor)) director finds that any violation or practice specified in the notice of charges has been established, the ((supervisor)) director may issue and serve upon the mutual savings bank an order to cease and desist from the violation or practice. The order may require the mutual savings bank and its trustees, officers, employees, and agents to cease and desist from the violation or practice and may require the mutual savings bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the mutual savings bank concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein, unless it is stayed, modified, terminated, or set aside by action of the ((supervisor)) director or a reviewing court.

Sec. 303. RCW 32.04.260 and 1979 c 46 s 2 are each amended to read as follows:

Whenever the ((supervisor)) director determines that the acts specified in RCW 32.04.250 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the mutual savings bank or to otherwise seriously prejudice the interest of its depositors, the ((supervisor)) director may also issue a temporary order requiring the mutual savings bank to cease and desist from the violation or practice. The order shall become effective upon service on the mutual savings bank and, unless set aside, limited, or suspended by a court in proceedings under RCW 32.04.270, shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the ((supervisor)) director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the mutual savings bank under RCW 32.04.250.

Sec. 304. RCW 32.04.280 and 1979 c 46 s 4 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 32.04.260, the ((supervisor)) director may apply to the superior court of the county of the principal place of business of the mutual savings bank for an injunction to enforce the order. The court shall issue an injunction if it determines there has been a violation or threatened violation.

Sec. 305. RCW 32.04.290 and 1979 c 46 s 5 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 32.04.250 or 32.16.093 may be held at such place as is designated by the ((supervisor)) director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the ((supervisor)) director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the ((supervisor)) director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 32.04.250 or 32.16.093, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected mutual savings bank under subsection (2) of this section, and until the record in the proceeding has been filed as provided therein, the ((supervisor)) director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the ((supervisor)) director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section shall be exclusive for orders issued under RCW 32.04.250 and 32.16.093.

(2) Any party to the proceeding or any person required by an order, temporary order, or injunction issued under RCW 32.04.250, 32.04.260, 32.04.280, or 32.16.093 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected mutual savings bank within ten days after the date of service of the order a written petition praying that the order of the ~~((supervisor))~~ director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the ~~((supervisor))~~ director and the ~~((supervisor))~~ director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record, to affirm, modify, terminate, or set aside in whole or in part the order of the ~~((supervisor))~~ director except that the ~~((supervisor))~~ director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the ~~((supervisor))~~ director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 32.04.250, 32.04.260, or 32.16.093, or under RCW 32.16.090, as now or hereafter amended, shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

Sec. 306. RCW 32.04.300 and 1979 c 46 s 6 are each amended to read as follows:

The ~~((supervisor))~~ director may apply to the superior court of the county of the principal place of business of the mutual savings bank affected for the enforcement of any effective and outstanding order issued under RCW 32.04.250 or 32.16.093, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any such order, or to review, modify, suspend, terminate, or set aside any such order, except as provided in RCW 32.04.270, 32.04.280, and 32.04.290.

Sec. 307. RCW 32.08.010 and 1955 c 13 s 32.08.010 are each amended to read as follows:

When authorized by the ~~((supervisor))~~ director, as hereinafter provided, not less than nine nor more than thirty persons may form a corporation to be known as a "mutual savings bank." Such persons must be citizens of the United States; at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the bank is to be located and its business transacted. They shall subscribe and acknowledge an incorporation certificate in triplicate which shall specifically state:

(1) The name by which the savings bank is to be known, which name shall include the words "mutual savings bank";

(2) The place where the bank is to be located, and its business transacted, naming the city or town and county;

(3) The name, occupation, residence, and post office address of each incorporator;

(4) The sums which each incorporator will contribute in cash to the initial guaranty fund, and to the expense fund respectively, as provided in RCW 32.08.090 and 32.08.100;

(5) A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in RCW 32.16.010.

Sec. 308. RCW 32.08.020 and 1955 c 13 s 32.08.020 are each amended to read as follows:

At the time of executing the incorporation certificate, the proposed incorporators shall sign a notice of intention to organize the mutual savings bank, which shall specify their names, the name of the proposed corporation, and its location as set forth in the incorporation certificate. The original of such notice shall be filed in the office of the ((~~supervisor~~)) director within sixty days after the date of its execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the ((~~supervisor~~)) director, the publication to be commenced within thirty days after such designation. At least fifteen days before the incorporation certificate is submitted to the ((~~supervisor~~)) director for examination, as provided in RCW 32.08.030, a copy of such notice shall be served upon each savings bank doing business in the city or town named in the incorporation certificate, by mailing such copy (postage prepaid) to such bank.

Sec. 309. RCW 32.08.030 and 1955 c 13 s 32.08.030 are each amended to read as follows:

After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to incorporate, and within ten days after the date of the last publication thereof, the incorporation certificate executed in triplicate shall be submitted for examination to the ((~~supervisor~~)) director at his or her office in Olympia, with affidavits showing due publication and service of the notice of intention to organize prescribed in RCW 32.08.020.

Sec. 310. RCW 32.08.040 and 1955 c 13 s 32.08.040 are each amended to read as follows:

When any such certificate has been filed for examination the ((~~supervisor~~)) director shall thereupon ascertain from the best source of information at his or her command, and by such investigation as he or she may deem necessary, whether the character, responsibility, and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted

in accordance with the intent and purpose of this title, and whether the public convenience and advantage will be promoted by allowing such proposed bank to be incorporated and engage in business, and whether greater convenience and access to a savings bank would be afforded to any considerable number of depositors by opening a mutual savings bank in the place designated, whether the population in the neighborhood of such place, and in the surrounding country, affords a reasonable promise of adequate support for the proposed bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash. After the ((supervisor)) director has satisfied himself or herself by such investigation whether it is expedient and desirable to permit such proposed bank to be incorporated and engage in business, he or she shall within sixty days after the date of the filing of the certificate for examination indorse upon each of the triplicates thereof over his or her official signature the word "approved" or the word "refused," with the date of such indorsement. In case of refusal he or she shall forthwith return one of the triplicates so indorsed to the proposed incorporators from whom the certificate was received.

Sec. 311. RCW 32.08.050 and 1979 ex.s. c 57 s 6 are each amended to read as follows:

From the ((supervisor's)) director's refusal to issue a certificate of authorization, the applicants or a majority of them, may within thirty days from the date of the filing of the certificate of refusal with the secretary of state, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general and the ((supervisor of banking)) director by filing in the office of the ((supervisor)) director a notice that they appeal to such board from his or her refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the ((supervisor's)) director's, and shall be final.

Sec. 312. RCW 32.08.060 and 1981 c 302 s 26 are each amended to read as follows:

In case of approval, the ((supervisor)) director shall forthwith give notice thereof to the proposed incorporators, and file one of the duplicate certificates in his or her own office, and shall transmit the other to the secretary of state. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other incorporation certificates, the secretary of state shall file the certificate and record the same. Upon the filing of said incorporation certificate in duplicate approved as aforesaid in the offices of the ((supervisor)) director and the secretary of state, the persons named therein and their successors shall thereupon become and be a corporation, which corporation shall have the powers and be subject to the duties and obligations prescribed in this title and its corporate existence shall be perpetual, unless sooner terminated pursuant to law, but such corporation shall not receive deposits or engage in business until authorized so to do by the ((supervisor)) director as provided in RCW 32.08.070.

Sec. 313. RCW 32.08.061 and 1981 c 302 s 27 are each amended to read as follows:

A mutual savings bank may amend its incorporation certificate to extend the period of its corporate existence for a further definite time or perpetually by a resolution adopted by a majority vote of its board of trustees. Duplicate copies of the resolution, subscribed and acknowledged by the president and secretary of such bank, shall be filed in the office of the ~~((supervisor))~~ director within thirty days after its adoption. If the ~~((supervisor))~~ director finds that the resolution conforms to law he or she shall, within sixty days after the date of the filing thereof, endorse upon each of the duplicates thereof, over his or her official signature, his or her approval and forthwith give notice thereof to the bank and shall file one of the certificates in his or her own office and shall transmit the other to the secretary of state. Upon receipt from the mutual savings bank of the same fees as are required of general corporations for filing corresponding instruments, the secretary of state shall file the resolution and record the same. Upon the filing of said resolution in duplicate, approved as aforesaid in the offices of the ~~((supervisor))~~ director and the secretary of state, the corporate existence of said bank shall continue for the period set forth in said resolution unless sooner terminated pursuant to law.

Sec. 314. RCW 32.08.070 and 1981 c 302 s 28 are each amended to read as follows:

Before a mutual savings bank shall be authorized to do any business the ~~((supervisor))~~ director shall be satisfied that the corporation has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If satisfied that the corporation has in good faith complied with all the requirements of law, and fulfilled all the conditions precedent to commencing business imposed by this title, the ~~((supervisor))~~ director shall within six months after the date upon which the proposed organization certificate was filed with him or her for examination, but in no case after the expiration of that period, issue under his or her hand and official seal in triplicate an authorization certificate to such corporation. Such authorization certificate shall state that the corporation therein named has complied with all the requirements of law, that it is authorized to transact at the place designated in its certificate of incorporation, the business of a mutual savings bank. One of the triplicate authorization certificates shall be transmitted by the ~~((supervisor))~~ director to the corporation therein named, and the other two authorization certificates shall be filed by the ~~((supervisor))~~ director in the same public offices where the certificate of incorporation is filed, and shall be attached to said incorporation certificate.

Sec. 315. RCW 32.08.080 and 1955 c 13 s 32.08.080 are each amended to read as follows:

Before such corporation shall be authorized to receive deposits or transact business other than the completion of its organization, the ~~((supervisor))~~ director shall be satisfied that:

(1) The incorporators have made the deposit of the initial guaranty fund required by this title;

(2) ~~((That))~~ The incorporators have made the deposit of the expense fund required by RCW 32.08.090 and if the ~~((supervisor))~~ director shall so require, have entered into the agreement or undertaking with him or her and have filed the same and the security therefor as prescribed in said section;

(3) ~~((That))~~ The corporation has transmitted to the ~~((supervisor))~~ director the name, residence, and post office address of each officer of the corporation;

(4) ~~((That))~~ Its certificate of incorporation in triplicate has been filed in the respective public offices designated in this title.

Sec. 316. RCW 32.08.090 and 1955 c 13 s 32.08.090 are each amended to read as follows:

Before any mutual savings bank shall be authorized to do business, its incorporators shall create an expense fund from which the expense of organizing such bank and its operating expenses may be paid, until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings. The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the ~~((supervisor))~~ director as trustee for the depositors with the savings bank as he or she may require to make such further contributions in cash to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings, in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking shall fix the maximum liability assumed thereby which shall be a reasonable amount approved by the ~~((supervisor))~~ director and the same shall be secured to his or her satisfaction, which security in his or her discretion may be by a surety bond executed by a domestic or foreign corporation authorized to transact within this state the business of surety. The agreement or undertaking and security shall be filed in the office of the ~~((supervisor))~~ director. Such agreement or undertaking and such security need not be made or furnished unless the ~~((supervisor))~~ director shall require the same. The amounts contributed to the expense fund of said savings bank by the incorporators or trustees shall not constitute a liability of the savings bank except as hereinafter provided.

Sec. 317. RCW 32.08.116 and 1982 c 5 s 2 are each amended to read as follows:

A savings bank not having net earnings or undivided profits or other surplus may pay interest and dividends from its guaranty fund upon prior written approval of the ~~((supervisor))~~ director, which approval shall not be withheld

unless the (~~(supervisor)~~) director has determined that such payments would place the savings bank in an unsafe and unsound condition.

Sec. 318. RCW 32.08.130 and 1955 c 13 s 32.08.130 are each amended to read as follows:

When the portion of the guaranty fund created from earnings amounts to not less than five thousand dollars (including in the case of a savings bank converted from a building and loan or savings and loan association or society the amount of the initial guaranty fund), the board of trustees, with the written consent of the (~~(supervisor)~~) director, may establish a reimbursement fund from which to repay contributors to the expense fund and the initial guaranty fund (excepting the initial guaranty fund in the case of a bank converted from a building and loan or savings and loan association or society), and may transfer to the reimbursement fund any unexpended balance of contributions to the expense fund. At the close of each dividend period the trustees may place to the credit of the reimbursement fund not more than one percent of the net earnings of the bank during that period. Payments from the reimbursement fund may be made from time to time in such amounts as the board of trustees shall determine, and shall be made first to the contributors to the expense fund in proportion to their contributions thereto until they shall have been repaid in full, and then shall be made to the contributors to the guaranty fund in proportion to their contributions thereto until they shall have been repaid in full. In case of the liquidation of the savings bank before the contributions to the expense fund and the initial guaranty fund have been fully repaid as above contemplated, any portion of the contributions not needed for the payment of the expenses of liquidation and the payment of depositors in full shall be paid to the contributors to the expense fund in proportion to their contributions thereto until they have been repaid in full, and then shall be paid to the contributors to the guaranty fund in proportion to their contributions thereto until they have been repaid in full.

Sec. 319. RCW 32.08.140 and 1981 c 86 s 2 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (13) To wind up and liquidate its business in accordance with this title.
- (14) To adopt and use a common seal and to alter the same at pleasure.
- (15) To do all other acts authorized by this title.

Sec. 320. RCW 32.08.210 and 1975 1st ex.s. c 265 s 1 are each amended to read as follows:

A mutual savings bank shall have the power to act as trustee under:

(1) A trust established by an inter vivos trust agreement or under the will of a deceased person.

(2) A trust established in connection with any collective bargaining agreement or labor negotiation wherein the beneficiaries of the trust include the employees concerned under the agreement or negotiation, or a trust established in connection with any pension, profit sharing, or retirement benefit plan of any corporation, partnership, association, or individual, including but not limited to retirement plans established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962", as now constituted or hereafter amended, or plans established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended.

A mutual savings bank may be appointed to and accept the appointment of personal representative of the last will and testament, or administrator with will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of minors and incompetent and disabled persons.

The restrictions, limitations and requirements in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the restrictions, limitations, and requirements relate to exercising the powers granted under this section. The incidental trust powers to act as agent in the management of trust property and the transaction of trust business in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the incidental powers relate to exercising the powers granted under this section.

Before engaging in trust business, a mutual savings bank shall apply to the ~~((supervisor of banking))~~ director on such form as he or she shall determine and pay the same fee as required for a state bank to engage in trust business. In considering such application the ~~((supervisor))~~ director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary whether the management and personnel of the mutual savings bank are such as to command confidence and warrant belief that the trust business will be adequately and efficiently conducted in accordance with law, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed trust business and whether the resources of the mutual savings bank are sufficient to support the conduct of such trust business, and that the mutual savings bank has and maintains, in addition to its guaranty fund, undivided profits against which the depositors have no prior claim in an amount not less

than would be required of a state bank or trust company, which undivided profits shall be eligible for investment in the same manner as the guaranty fund of a mutual savings bank. Within sixty days after receipt of such application, the ~~((supervisor))~~ director shall either approve or refuse the same and forthwith return to the mutual savings bank a copy of the application upon which his or her decision has been endorsed. The ~~((supervisor))~~ director shall not be required to approve or refuse an application until thirty days after any appropriate approval has been obtained from a federal regulatory agency. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. A mutual savings bank shall not use the word "trust" in its name, but may use the word "trust" in its business or advertising.

Sec. 321. RCW 32.08.215 and 1985 c 56 s 4 are each amended to read as follows:

No mutual savings bank or wholly owned subsidiary thereof shall act as trustee for common trust funds established for the benefit of more than one beneficiary under more than one trust agreement, unless the savings bank or subsidiary trust company shall first give written notice to the ~~((supervisor))~~ director, at least sixty days prior to the creation of any such fund.

Sec. 322. RCW 32.08.230 and 1981 c 86 s 13 are each amended to read as follows:

Any mutual savings bank engaging in any activity contemplated in RCW 32.08.225, whereby it holds or purchases subordinated securities, issues letters of credit to secure a portion of any sale or issue of loans sold or exchanged, or in any manner acts as a partial guarantor or insurer or repurchaser of any loans sold or exchanged, shall do so only in accordance with such reasonable restrictions and requirements as the ~~((supervisor of banking))~~ director shall require and shall report and carry such transactions on its books and records in such manner as the ~~((supervisor))~~ director shall require. In establishing any requirements and restrictions hereunder, the ~~((supervisor))~~ director shall consider the effect the transaction and the reporting thereof will have on the safety and soundness of the mutual savings bank engaging in it.

Sec. 323. RCW 32.12.010 and 1981 c 192 s 27 are each amended to read as follows:

Deposits made by individuals in a mutual savings bank under this chapter are governed by chapter 30.22 RCW. In addition, other deposits which a savings bank may establish include but are not limited to the following:

(1) Deposits in the name of, or on behalf of, a partnership or other form of multiple ownership enterprise.

(2) Deposits in the name of a corporation, society, or unincorporated association.

(3) Deposits maintained by a person, society, or corporation as administrator, executor, guardian, or trustee under a will or trust agreement.

Every such bank may limit the aggregate amount which an individual or any corporation or society may have to his or her or its credit to such sum as such bank may deem expedient to receive; and may in its discretion refuse to receive a deposit, or may at any time return all or any part of any deposits or require the withdrawal of any dividends or interest. Any account in excess of one hundred thousand dollars may only be accepted or held in accordance with such regulations as the (~~supervisor~~) director may establish.

Sec. 324. RCW 32.12.020 and 1985 c 56 s 6 are each amended to read as follows:

The sums deposited with any savings bank, together with any dividends or interest credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this section and chapter 30.22 RCW. Such regulations shall be posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be available to depositors upon request. All such rules and regulations, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

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

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

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

(4) The board of trustees of any such bank may by its bylaws provide for making payments to depositors at their request, of dividends or interest payable on any deposit, without requiring the production of the passbook or certificate

of deposit of the depositor, and any payment made in accordance with any such request and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such request prior to receipt by such savings bank of notice in writing not to pay such sums in accordance with the terms of such request.

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

Sec. 325. RCW 32.12.050 and 1985 c 56 s 7 are each amended to read as follows:

(1) No savings bank shall by any system of accounting, or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association, or corporation, or under any title or designation that is not in accordance with the actual facts.

(2) The bonds, notes, mortgages, or other interest bearing obligations purchased or acquired by a savings bank, shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity, and charging to "profit and loss" a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity and crediting to "profit and loss" a sufficient sum to bring it to par at maturity.

(3) No such bank shall enter, or at any time carry on its books, the real estate and the building or buildings thereon used by it as its place of business at a valuation exceeding their actual cost to the bank.

(4) Every such bank shall conform its methods of keeping its books and records to such orders in respect thereof as shall have been made and promulgated by the ~~((supervisor))~~ director. Any officer, agent, or employee of any savings bank who refuses or neglects to obey any such order shall be punished as hereinafter provided.

(5) Real estate acquired by a savings bank, other than that acquired for use as a place of business, may be entered on the books of the bank at the actual cost thereof but shall not be carried beyond the current dividend period at an amount in excess of the amount of the debt in protection of which such real estate was acquired, plus the cost of any improvements thereto.

An appraisal shall be made by a qualified person of every such parcel of real estate within six months from the date of conveyance. If the value at which

such real estate is carried on the books is in excess of the value found on appraisal the book value shall, at the end of the dividend period during which such appraisal was made, be reduced to an amount not in excess of such appraised value.

(6) No such bank shall enter or carry on its books any asset which has been disallowed by the (~~(supervisor)~~) director or the trustees of such bank, or any debt owing to it which has remained due without prosecution and upon which no interest has been paid for more than one year, or on which a judgment has been recovered which has remained unsatisfied for more than two years, unless the (~~(supervisor)~~) director upon application by such savings bank has fixed a valuation at which such debt may be carried as an asset, or unless such debt is secured by first mortgage upon real estate, in which latter case it may be carried at the actual cash value of such real estate as determined by written appraisal signed by two or more persons appointed by the board of trustees and filed with it.

(7) Notwithstanding the prohibitions of this section, a savings bank may maintain its books and records and may enter and carry on its books any asset or liability at any valuation in accordance with any accounting rules promulgated or adopted by the federal deposit insurance corporation or the financial accounting standards board or the (~~(supervisor of banking)~~) director.

Sec. 326. RCW 32.12.060 and 1955 c 13 s 32.12.060 are each amended to read as follows:

Any debt due a savings bank on which interest is one year or more past due and unpaid, unless such debt is well secured and in course of collection by legal process or probate proceedings, shall be considered a bad debt, and shall be charged off of the books of such bank. A judgment held by a savings bank shall not be considered an asset of the corporation after two years from the date of its rendition, unless with the written permission of the (~~(supervisor)~~) director specifying an additional period: PROVIDED, That time consumed by any appeal shall be excluded.

Sec. 327. RCW 32.12.070 and 1955 c 80 s 3 are each amended to read as follows:

(1) Gross current operating earnings. Every savings bank shall close its books, for the purpose of computing its net earnings, at the end of any period for which a dividend is to be paid, and in no event less frequently than semiannually. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and uncollected included in the last previous calculation of earnings;

(b) Interest accrued and uncollected upon debts owing to it secured by authorized collateral, upon which there has been no default for more than one year, and upon corporate bonds, or other interest bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization;

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

(e) Such other items as the ((~~supervisor~~)) director, in his or her discretion and upon his or her written consent, may permit to be included.

(2) Net current earnings. To determine the amount of its net earnings for each dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of bonds or other interest bearing obligations purchased above par in order to bring them to par at maturity;

(d) Contributions to any corporation or any community chest fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. The total contributions for any calendar year shall not exceed a sum equal to one-half of one percent of the net earnings of such savings bank for the preceding calendar year.

The balance thus obtained shall constitute the net earnings of the savings bank for such period.

(3) Earnings paid by a savings bank on deposits may be referred to as "dividends" or as "interest".

Sec. 328. RCW 32.16.020 and 1955 c 13 s 32.16.020 are each amended to read as follows:

(1) Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he will, so far as it devolves on him or her, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the ((~~supervisor~~)) director and filed and preserved in his or her office.

(2) Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect that he or she is, at the date thereof, a trustee of the savings bank, and that he or she has not resigned, become ineligible, or in any other manner vacated his or her office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be

entitled to record and shall be transmitted to the ((supervisor)) director and filed in his or her office prior to the tenth day of March in each year.

Sec. 329. RCW 32.16.060 and 1955 c 13 s 32.16.060 are each amended to read as follows:

The board of trustees of every savings bank may, by resolution incorporated in its bylaws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

(1) The number may be increased to a number designated in the resolution not exceeding thirty: PROVIDED, That reasons therefor are shown to the satisfaction of the ((supervisor)) director and his or her written consent thereto is first obtained.

(2) The number may be reduced to a number designated in the resolution but not less than nine. The reduction shall be effected by omissions to fill vacancies occurring in the board.

Sec. 330. RCW 32.16.080 and 1955 c 13 s 32.16.080 are each amended to read as follows:

(1) Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such character as to be injurious to such bank, or he or she has been guilty of acts that are detrimental or hostile to the interests of the bank, he or she may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof: PROVIDED, That a written copy of the charges made against him or her has been served upon him or her personally at least two weeks before such meeting, that the vote of such trustees by ayes and noes is entered in the record of the minutes of such meeting, and that such removal receives the written approval of the ((supervisor)) director which shall be attached to the minutes of such meeting and form a part of the record.

(2) The office of a trustee of a savings bank shall immediately become vacant whenever he or she:

(a) Fails to comply with any of the provisions of RCW 32.16.020 relating to his or her official oath and declaration;

(b) Becomes disqualified for any of the reasons specified in RCW 32.16.010(2);

(c) Has failed to attend the regular meetings of the board of trustees, or to perform any of his or her duties as trustee, for a period of six successive months, unless excused by the board for such failure;

(d) Violates any of the provisions of RCW 32.16.070 imposing restrictions upon trustees and officers, except subsection (2)(c) thereof.

(3) A trustee who has forfeited or vacated his or her office shall not be eligible to reelection, except when the forfeiture or vacancy occurred solely by reason of his or her:

(a) Failure to comply with the provisions of RCW 32.16.020, relating to his or her official oath and declaration; or

(b) Neglect of his or her official duties as prescribed in subsection (2)(c) of this section; or

(c) Disqualification through becoming a nonresident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company, or national banking association under the circumstances specified in RCW 32.16.070(1)(b) and such disqualification has been removed.

Sec. 331. RCW 32.16.090 and 1979 c 46 s 7 are each amended to read as follows:

Whenever the ~~((supervisor))~~ director finds that:

(1) Any trustee, officer, or employee of any mutual savings bank has committed or engaged in:

(a) A violation of any law, rule, or cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the mutual savings bank; or

(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as trustee, officer, or employee; and

(2) The ~~((supervisor))~~ director determines that:

(a) The mutual savings bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty; and

(3) The ~~((supervisor))~~ director determines that the violation, practice, or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the trustee, officer, or employee;

Then the ~~((supervisor))~~ director may serve upon the trustee, officer, or employee of any mutual savings bank a written notice of the ~~((supervisor's))~~ director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the mutual savings bank.

Sec. 332. RCW 32.16.093 and 1979 c 46 s 8 are each amended to read as follows:

A notice of an intention to remove a trustee, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a mutual savings bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the ~~((supervisor))~~ director at the request of the trustee, officer, or employee for good cause shown or at the request of the attorney general of the state.

Unless the trustee, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the ~~((supervisor))~~

director finds that any of the grounds specified in the notice have been established, the ((supervisor)) director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the mutual savings bank as the ((supervisor)) director may consider appropriate.

Any order under this section shall become effective at the expiration of ten days after service upon the mutual savings bank and the trustee, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the ((supervisor)) director or a reviewing court.

Sec. 333. RCW 32.16.095 and 1979 c 46 s 9 are each amended to read as follows:

If at any time because of the removal of one or more trustees under this chapter there shall be on the board of trustees of a mutual savings bank less than a quorum of trustees, all powers and functions vested in, or exercisable by the board shall vest in, and be exercisable by the trustee or trustees remaining, until such time as there is a quorum on the board of trustees. If all of the trustees of a mutual savings bank are removed under this chapter, the ((supervisor)) director shall appoint persons to serve temporarily as trustees until such time as their respective successors take office.

Sec. 334. RCW 32.16.097 and 1979 c 46 s 10 are each amended to read as follows:

Any present or former trustee, officer, or employee of a mutual savings bank or any other person against whom there is outstanding an effective final order issued under RCW 32.16.093, which order has been served upon the person, and who, in violation of the order, (1) participates in any manner in the conduct of the affairs of the mutual savings bank involved; or (2) directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the mutual savings bank; or (3) without the prior approval of the ((supervisor)) director, votes for a trustee or serves or acts as a trustee, officer, employee, or agent of any mutual savings bank, shall be guilty of a gross misdemeanor, and, upon conviction, shall be punishable as prescribed under chapter 9A.20 RCW.

Sec. 335. RCW 32.16.140 and 1989 c 180 s 9 are each amended 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)) director, 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.

Sec. 336. RCW 32.20.035 and 1989 c 97 s 2 are each amended to read as follows:

Except as may be limited by the (~~supervisor~~) director 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.

Sec. 337. RCW 32.20.280 and 1981 c 86 s 4 are each amended to read as follows:

A mutual savings bank may invest its funds in real estate as follows:

(1) A tract of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use revenue may be derived: PROVIDED, That the cost of the land and building or buildings for the transaction of the business of the savings bank shall in no case exceed fifty percent of the guaranty fund, undivided profits, reserves, and subordinated securities of the savings bank, except with the approval of the (~~supervisor~~) director; and before the purchase of such property is made, or the erection of a building or buildings is commenced, the estimate of the cost thereof, and the cost of the completion of the building or buildings, shall be submitted to and approved by the (~~supervisor~~) director. "The cost of the land and building or buildings" means the amounts paid or expended therefor less the reasonable depreciation thereof taken by the bank against such improvements during the time they were held by the bank.

(2) Such lands as shall be conveyed to the savings bank in satisfaction of debts previously contracted in the course of its business.

(3) Such lands as the savings bank shall purchase at sales under judgments, decrees, or mortgages held by it.

All real estate purchased by any such savings bank, or taken by it in satisfaction of debts due it, under this section, shall be conveyed to it directly by name, or in the name of a corporation all of the stock of which is owned by the bank, or in such other manner as the bank shall determine to be in the best interest of the bank, and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is situated.

(4) Every parcel of real estate purchased or acquired by a savings bank under subsections (2) and (3) of this section, shall be sold by it within five years from the date on which it was purchased or acquired, or in case it was acquired subject to a right of redemption, within five years from the date on which the right of redemption expires, unless:

- (a) There is a building thereon occupied by the savings bank and its offices,
- (b) The ~~((supervisor))~~ director, on application of the board of trustees of the savings bank, extends the time within which such sale shall be made, or
- (c) The property is held by the bank as an investment under the provisions of RCW 32.20.285, as now or hereafter amended.

Sec. 338. RCW 32.20.290 and 1967 c 145 s 8 are each amended to read as follows:

No savings bank shall deposit any of its funds with any bank, trust company, or other moneyed corporation or concern which has not been approved by the ~~((supervisor))~~ director as a depository for the savings bank's funds and designated a depository by vote of a majority of the trustees of the savings bank, exclusive of any trustee who is an officer, director, or trustee of or who owns more than one-half of one percent of the outstanding stock in the depository so designated.

Sec. 339. RCW 32.24.010 and 1955 c 13 s 32.24.010 are each amended to read as follows:

If the trustees of any solvent mutual savings bank deem it necessary or expedient to close the business of such bank, they may, by affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting called for that purpose, of which one month's notice has been given, either personally or by mailing such notice to the post office address of each trustee, declare by resolution their determination to close such business and pay the moneys due depositors and creditors and to surrender the corporate franchise. Subject to the approval and under the direction of the ~~((supervisor))~~ director, such savings bank may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with the original plan and objects.

Sec. 340. RCW 32.24.020 and 1981 c 302 s 29 are each amended to read as follows:

When the trustees, acting under the provisions of RCW 32.24.010, have paid the sums due respectively to all creditors and depositors, who, after such notice as the ~~((supervisor of banking))~~ director shall prescribe, claim the money due and their deposits, the trustees shall make a transcript or statement from the books in the bank of the names of all depositors and creditors who have not claimed or have not received the balance of the credit due them, and of the sums due them, respectively, and shall file such transcript with the ~~((supervisor))~~ director and pay over and transfer all such unclaimed and unpaid deposits, credits, and moneys to the ~~((supervisor))~~ director. The trustees shall then report their proceedings, duly verified, to the superior court of the county wherein the bank

is located, and upon such report and the petition of the trustees, and after notice to the attorney general and the ~~((supervisor))~~ director, and such other notice as the court may deem necessary, the court shall adjudge the franchise surrendered and the existence of the corporation terminated. Certified copies of the judgment shall be filed in the offices of the secretary of state and the ~~((supervisor of banking))~~ director and shall be recorded in the office of the secretary of state.

Sec. 341. RCW 32.24.030 and 1985 c 56 s 14 are each amended to read as follows:

An unconverted mutual savings bank may for the purpose of consolidation, acquisition, pooling of assets, merger, or voluntary liquidation arrange for its assets and liabilities to become assets and liabilities of another mutual savings bank, by the affirmative vote or with the written consent of two-thirds of the whole number of its trustees, but only with the written consent of the ~~((supervisor))~~ director and upon such terms and conditions as he or she may prescribe.

Upon any such transfer being made, or upon the liquidation of any such mutual savings bank for any cause whatever, or upon its being no longer engaged in the business of a mutual savings bank, the ~~((supervisor))~~ director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation has been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done, the ~~((supervisor))~~ director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note the fact upon his or her records.

In case of the consolidation with or voluntary liquidation of a mutual savings bank by another mutual savings bank, as herein provided, any sums advanced by its incorporators, or others, to create or maintain its guaranty fund or its expense fund shall not be liabilities of such mutual savings bank unless the mutual savings bank, so assuming its liabilities shall specifically undertake to pay the same, or a stated portion thereof.

Sec. 342. RCW 32.24.040 and 1955 c 13 s 32.24.040 are each amended to read as follows:

Whenever it appears to the ~~((supervisor))~~ director that any mutual savings bank is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection, or that any trustee or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of the ~~((supervisor))~~ director, such ~~((supervisor))~~ director may give notice to the mutual savings bank so offending or delinquent or whose trustee or officer is thus offending or delinquent to correct such offense or delinquency, and if the mutual savings bank fails to comply with the terms of such notice within thirty days from the date of its issuance, or within such further time as the ~~((supervisor))~~ director may allow, then the ~~((supervisor))~~ director may take possession of such mutual savings bank as in the case of insolvency.

Sec. 343. RCW 32.24.050 and 1955 c 13 s 32.24.050 are each amended to read as follows:

Whenever it appears to the ((supervisor)) director that any offense or delinquency referred to in RCW 32.24.040 renders a mutual savings bank in an unsound or unsafe condition to continue its business, or that it has suspended payment of its obligations, or is insolvent, such ((supervisor)) director may take possession thereof without notice.

Upon taking possession of any mutual savings bank, the ((supervisor)) director shall forthwith proceed to liquidate the business, affairs, and assets thereof and such liquidation shall be had in accordance with the provisions of law governing the liquidation of insolvent banks and trust companies.

Sec. 344. RCW 32.24.060 and 1955 c 13 s 32.24.060 are each amended to read as follows:

Within ten days after the ((supervisor)) director takes possession thereof, a mutual savings bank may serve notice upon such ((supervisor)) director to appear before the superior court in the county wherein such corporation is located, at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it finds that possession was taken by the ((supervisor)) director in good faith and for cause, but if it finds that no cause existed for the taking possession of such corporation, it shall require the ((supervisor)) director to restore the bank to the possession of its assets and enjoin him or her from further interference therewith without cause.

Sec. 345. RCW 32.24.070 and 1955 c 13 s 32.24.070 are each amended to read as follows:

No receiver shall be appointed by any court for any mutual savings bank, nor shall any assignment of any such bank for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the mutual savings bank. Immediately upon any such appointment, the clerk of the court shall notify the ((supervisor)) director by telegram and mail of such appointment and the ((supervisor)) director shall forthwith take possession of the mutual savings bank, as in case of insolvency, and the temporary receiver shall upon demand of the ((supervisor)) director surrender up to him or her such possession and all assets which have come into his or her hands. The ((supervisor)) director shall in due course pay such receiver out of the assets of the mutual savings bank such amount as the court shall allow.

Sec. 346. RCW 32.24.080 and 1985 c 56 s 15 are each amended to read as follows:

Every transfer of its property or assets by any mutual savings bank in this state, made (1) after it has become insolvent, (2) within ninety days before the date the ~~((supervisor))~~ director takes possession of such savings bank under RCW 32.24.050 or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and (3) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void. Every trustee, officer, or employee making any such transfer shall be guilty of a felony.

Sec. 347. RCW 32.24.090 and 1973 1st ex.s. c 54 s 3 are each amended to read as follows:

The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any mutual savings bank the deposits in which are to any extent insured by that corporation and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the ~~((supervisor of banking))~~ director may appoint the federal deposit insurance corporation as receiver or liquidator of such mutual savings bank. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a mutual savings bank, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended.

Sec. 348. RCW 32.24.100 and 1973 1st ex.s. c 54 s 4 are each amended to read as follows:

The pendency of any proceedings for judicial review of the ~~((supervisor's))~~ director's actions in taking possession and control of a mutual savings bank and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the mutual savings bank which are insured by the corporation. During the pendency of any proceedings for judicial review, the ~~((supervisor of banking))~~ director shall make available to the federal deposit insurance corporation such facilities in or of the mutual savings bank and such books, records, and other relevant data of the mutual savings bank as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the mutual savings bank. The federal deposit insurance corporation and its directors, officers, agents, and employees, the ~~((supervisor of banking))~~ director, and his or her agents and employees shall be free from liability to the mutual savings bank, its directors, stockholders, and creditors for or on account of any action taken in connection herewith.

Sec. 349. RCW 32.32.010 and 1981 c 85 s 1 are each amended to read as follows:

This chapter shall exclusively govern the conversion of mutual savings banks to capital stock savings banks. No mutual savings bank may convert to

the capital stock form of organization without the prior written approval of the ~~((supervisor))~~ director pursuant to this chapter, except that the ~~((supervisor))~~ director may waive requirements of this chapter in appropriate cases.

Sec. 350. RCW 32.32.015 and 1981 c 85 s 2 are each amended to read as follows:

The ~~((supervisor))~~ director may prescribe under this chapter such forms as the ~~((supervisor))~~ director deems appropriate for use by a mutual savings bank seeking to convert to a capital stock savings bank pursuant to this chapter.

Sec. 351. RCW 32.32.020 and 1981 c 85 s 3 are each amended to read as follows:

(1) If an applicant finds that compliance with any provision of this chapter would be in conflict with applicable federal law, the ~~((supervisor))~~ director shall grant or deny a request of noncompliance with the provision. The request may be incorporated in the application for conversion; otherwise, the applicant shall file the request in accordance with the requirements of the ~~((supervisor))~~ director.

(2) In making any such request, the applicant shall:

(a) Specify the provision or provisions of this chapter with respect to which the applicant desires waiver;

(b) Furnish an opinion of counsel demonstrating that applicable federal law is in conflict with the specified provision or provisions of this chapter; and

(c) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders, or other financial institutions or would be contrary to the public interest.

Sec. 352. RCW 32.32.025 and 1985 c 56 s 16 are each amended to read as follows:

As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in RCW 32.32.230, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate", when used to indicate a relationship with any person, means (a) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or

in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" (~~under RCW 83.08.005~~) if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing nonwithdrawable capital, or preferred stock, of a savings bank converted under this chapter or of a subsidiary institution or holding company.

(7) The term "charter" includes articles of incorporation, articles of reincorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in RCW 32.32.230, the term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(11) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(12) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with RCW 32.32.180.

(13) The term "employee" does not include a director or officer.

(14) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(15) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his or her quoted prices with other brokers or dealers.

(16) The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(17) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(18) Except as provided in RCW 32.32.435, the term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(19) The term "officer", for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chairman of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(20) Except as provided in RCW 32.32.435, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(21) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the exercise of his or her voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(22) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(23) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the (~~supervisor~~) director of financial institutions.

(24) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(25) Except as provided in RCW 32.32.435, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(26) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by RCW 32.32.045; (b) supplemental eligible account holders as required by RCW 32.32.055; (c) directors, officers, and employees, as permitted by RCW 32.32.140; and (d) eligible account holders and supplemental eligible account holders as permitted by RCW 32.32.145.

(27) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(28) ~~((The term "supervisor" means the supervisor of banking.~~

~~(29))~~ The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by RCW 32.32.055. The date shall be the last day of the calendar quarter preceding ~~((supervisor))~~ director of financial institutions approval of the application for conversion.

~~((30))~~ (29) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

~~((31))~~ (30) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires.

Sec. 353. RCW 32.32.030 and 1981 c 85 s 5 are each amended to read as follows:

No application for conversion may be approved by the ~~((supervisor))~~ director if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with this chapter;

(2) The conversion would result in a reduction of the applicant's net worth below requirements established by the ~~((supervisor))~~ director;

(3) The conversion may result in a taxable reorganization of the applicant under the United States Internal Revenue Code of 1954, as amended; or

(4) The converted savings bank does not meet the insurance requirements as established by the ~~((supervisor))~~ director.

Sec. 354. RCW 32.32.040 and 1985 c 56 s 17 are each amended to read as follows:

A converted savings bank or a holding company organized pursuant to chapter 32.34 RCW shall issue and sell capital stock at a total price equal to the estimated pro forma market value of the stock issued in connection with the conversion, based on an independent valuation, as provided in RCW 32.32.305. In the conversion of a mutual savings bank or holding company, either of which is in the process of merging with, being acquired by, or consolidating with a

stock savings bank, or a savings bank holding company owned by stockholders, or a subsidiary thereof, the following subsections apply:

(1) The price per share of the shares offered for subscription and issued in the conversion shall be not less than the price reported for stock which is listed on a national or regional stock exchange, or the bid price for stock which is traded on the NASDAQ system, as of the day before any public offering or other completion of the sale of stock in the conversion: PROVIDED, That for stock not so listed and not traded on the NASDAQ system, and any stock whose price has been affected, as of the day specified above, by a violation of RCW 32.32.225, the price per share shall be determined by the ((~~supervisor~~)) director, upon the submission of such information as the ((~~supervisor~~)) director may request.

(2) The independent valuation as provided in RCW 32.32.305 shall determine the aggregate value of shares for which subscription rights are granted pursuant to RCW 32.32.045, 32.32.050, and 32.32.055, rather than a price per share or number of shares as provided in RCW 32.32.290, 32.32.325, and 32.32.330. This independent valuation may be replaced by a demonstration, to the satisfaction of the ((~~supervisor~~)) director, of the fairness of the price of the shares issued.

Sec. 355. RCW 32.32.055 and 1981 c 85 s 10 are each amended to read as follows:

In plans involving an eligibility record date that is more than fifteen months prior to the date of the latest amendment to the application for conversion filed prior to the ((~~supervisor~~)) director approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the converting savings bank shall receive, without payment, nontransferable subscription rights to purchase supplemental shares in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings bank on the supplemental eligibility record date.

(1) Subscription rights received pursuant to this section shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to RCW 32.32.045 and 32.32.050.

(2) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with RCW 32.32.045 shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this section.

(3) In the event of an oversubscription for supplemental shares pursuant to this section, shares shall be allocated among the subscribing supplemental eligible account holders as follows:

(a) Shares shall be allocated among subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make the supplemental account holder's total allocation (including the number of shares, if any, allocated in accordance with RCW 32.32.045) equal to one hundred shares.

(b) Any shares not allocated in accordance with subsection (3)(a) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

Sec. 356. RCW 32.32.060 and 1981 c 85 s 11 are each amended to read as follows:

Any shares of the converting savings bank not sold in the subscription offering shall either be sold in a public offering through an underwriter or directly by the converting savings bank in a direct community marketing, subject to the applicant demonstrating to the ~~((supervisor))~~ director the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. The conditions shall include, but not be limited to:

(1) A condition limiting purchases by each officer and director or their associates in this phase of the offering to one-tenth of one percent of the total offering of shares.

(2) A condition limiting purchases by any person and that person's associates in this phase of the offering to a number of shares or a percentage of the total offering so long as the limitation does not exceed two percent of the shares to be sold in the total offering.

(3) A condition that any direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office. The methods by which preference shall be given shall be approved by the ~~((supervisor))~~ director.

Sec. 357. RCW 32.32.075 and 1981 c 85 s 14 are each amended to read as follows:

No officer or director, or their associates, may purchase without the prior written approval of the ~~((supervisor))~~ director the capital stock of the converted savings bank except from a broker or a dealer registered with the Securities and Exchange Commission for a period of three years following the conversion. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings bank.

As used in this section, the term "negotiated transactions" means transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting on the seller's behalf and the purchaser or the purchaser's investment representative. The term "investment representative" means a professional investment adviser acting as agent for the purchaser and

independent of the seller and not acting on behalf of the seller in connection with the transaction.

Sec. 358. RCW 32.32.105 and 1981 c 85 s 20 are each amended to read as follows:

The plan of conversion adopted by the applicant's board of directors may be amended by the board of directors with the concurrence of the ~~((supervisor))~~ director at any time prior to final approval of the ~~((supervisor))~~ director and may be terminated with the concurrence of the ~~((supervisor))~~ director at any time prior to issuance of the authorization certificate by the ~~((supervisor))~~ director.

Sec. 359. RCW 32.32.130 and 1981 c 85 s 25 are each amended to read as follows:

The plan of conversion shall contain no provision which the ~~((supervisor))~~ director determines to be inequitable or detrimental to the applicant, its savings account holders, or other savings banks or to be contrary to the public interest.

Sec. 360. RCW 32.32.150 and 1985 c 56 s 20 are each amended to read as follows:

Any insignificant residue of shares not sold in the subscription offering or in a public offering referred to in RCW 32.32.060 may be sold in such other manner as provided in the plan with the ~~((supervisor's))~~ director's approval.

Sec. 361. RCW 32.32.175 and 1981 c 85 s 34 are each amended to read as follows:

The ~~((supervisor))~~ director may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings bank.

Sec. 362. RCW 32.32.210 and 1985 c 56 s 21 are each amended to read as follows:

No converted savings bank may repurchase any of its capital stock from any person unless the repurchase is approved by the ~~((supervisor))~~ director either in advance or at the time of repurchase.

Sec. 363. RCW 32.32.215 and 1985 c 56 s 22 are each amended to read as follows:

Except as provided in RCW 32.32.222, no converted savings bank may declare or pay a cash dividend unless the declaration or payment of the dividend would be in accordance with the requirements of RCW 30.04.180 and would not have the effect of reducing the net worth of the converted savings bank below (1) the amount required for the liquidation account or (2) the amount required by the ~~((supervisor))~~ director.

Sec. 364. RCW 32.32.220 and 1985 c 56 s 23 are each amended to read as follows:

Except as provided in RCW 32.32.222, no converted savings bank may, without the prior approval of the ~~((supervisor))~~ director, for a period of ten years after the date of its conversion, declare or pay a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) The savings bank's net income for the current fiscal year; or
- (2) The average of the savings bank's net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

For purposes of this chapter, "net income" shall be determined by generally accepted accounting principles.

Sec. 365. RCW 32.32.222 and 1985 c 56 s 24 are each amended to read as follows:

A converted mutual savings bank may pay dividends on preferred stock at the rate or rates agreed in connection with the issuance of preferred stock if such issuance has been approved by the (~~supervisor~~) director.

Sec. 366. RCW 32.32.228 and 1989 c 180 s 6 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~~) director a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the (~~supervisor~~) director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the ~~((supervisor))~~ director, in the exercise of the ~~((supervisor's))~~ director's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual savings bank or the holding company of a mutual savings bank need only notify the ~~((supervisor))~~ director and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the ~~((supervisor))~~ director may require that the information required by (a) (i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(c) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the ~~((supervisor))~~ director may require that information required by (a) (i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the ~~((supervisor))~~ director in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the ~~((supervisor))~~ director.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who willfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to

chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The ~~((supervisor))~~ director may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the ~~((supervisor))~~ director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the ~~((supervisor))~~ director issues written notice of intent not to disapprove the action.

The ~~((supervisor))~~ director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW 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))~~ director any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4)(a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the ~~((supervisor))~~ director may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the ~~((supervisor))~~ director, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect.

Sec. 367. RCW 32.32.230 and 1985 c 56 s 26 are each amended to read as follows:

(1) No conversion may be approved by the ~~((supervisor))~~ director unless the plan of conversion provides that the converted savings bank shall enter into an agreement with the ~~((supervisor))~~ director, in form satisfactory to the ~~((supervisor))~~ director, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to acquire control of the converted savings bank. Any acquisition of a converted savings bank shall also comply with RCW 32.32.228.

(2) As used in this section:

(a) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(b) A person or company shall be deemed to have "control" of:

(i) A savings bank if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares of the savings bank, or controls in any manner the election of a majority of the directors of the bank;

(ii) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares or rights of the other company, or controls in any manner the election or appointment of a majority of the directors or trustees of the other company, or is a general partner in or has contributed more than twenty-five percent of the capital of the other company;

(iii) A trust if the person is a trustee thereof; or

(iv) A savings bank or any other company if the ~~((supervisor))~~ director determines, after reasonable notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or policies of the savings bank or other company.

(c) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than fifteen percent of its consolidated net worth at the close of this preceding fiscal year or of its consolidated net earnings for such fiscal year.

(d) The term "unrelated business activity" means any business activity not authorized for a savings bank or any subsidiary thereof.

Sec. 368. RCW 32.32.235 and 1981 c 85 s 46 are each amended to read as follows:

To the extent permitted by applicable federal or state law, a plan of conversion may provide for a provision in the charter of the converted savings bank containing, in substance, the restriction set forth in RCW 32.32.230. There may also be included a restriction providing that the charter provision may be amended only by a vote of up to seventy-five percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted savings bank. If the converted savings bank elects to adopt the foregoing optional charter provision, the ~~((supervisor))~~ director shall impose, as a condition to approval of the conversion, a requirement that the converted savings bank fully enforce the charter provision.

Sec. 369. RCW 32.32.240 and 1981 c 85 s 47 are each amended to read as follows:

A savings bank which is considering converting pursuant to this chapter and its directors, officers, and employees shall keep this consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the ~~((supervisor))~~ director may require remedial measures including:

(1) A public statement by the savings bank that its board of directors is currently considering converting pursuant to this chapter;

(2) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings bank's board of directors as to assure the equitability of the conversion;

(3) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the ~~((supervisor))~~ director; and

(4) Any other actions the ~~((supervisor))~~ director may deem appropriate and necessary to assure the fairness and equitability of the conversion.

Sec. 370. RCW 32.32.250 and 1981 c 85 s 49 are each amended to read as follows:

Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings bank shall:

(1) Notify its account holders of the action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings bank is located and/or by mailing a letter to each of its account holders; and

(2) Have copies of the adopted plan of conversion available for inspection by its account holders at each office of the savings bank.

The savings bank may also issue a press release with respect to the action. Copies of the proposed statement, letter, and press release are not required to be filed with the ~~((supervisor))~~ director but may be submitted to the ~~((supervisor))~~ director for comment. Copies of the definitive statement, letter, and press release shall be filed with the ~~((supervisor))~~ director as part of the application for conversion.

Sec. 371. RCW 32.32.255 and 1981 c 85 s 50 are each amended to read as follows:

The statement, letter, and press release of the applicant issued pursuant to RCW 32.32.250, unless otherwise authorized by the ~~((supervisor))~~ director, shall contain only (but need not contain all of) the following:

(1) A statement that the board of directors has adopted a plan to convert the savings bank from a mutual savings bank to a capital stock savings bank;

(2) A statement that the plan of conversion is subject to approval by the ~~((supervisor of banking))~~ director and by the appropriate federal regulatory authority or authorities (naming such an authority or authorities) before the plan can become effective and that account holders of the applicant will have an opportunity to file written comments including objections and materials supporting the objections with the ~~((supervisor))~~ director;

(3) A statement that the plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(4) A statement that there is no assurance that the approval of the ~~((supervisor of banking))~~ director or the approval of any appropriate federal authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(5) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(6) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(7) A brief description of the plan of conversion;

(8) The par value and approximate number of shares of capital stock to be issued and sold under the plan of conversion;

(9) A brief statement as to the extent to which directors, officers, and employees will participate in the conversion;

(10) A statement that savings account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation;

(11) A statement that borrowers' loans will be unaffected by conversion and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed prior to conversion;

(12) A statement that the normal business of the savings bank in accepting savings and making loans will continue without interruption; that the converted savings bank will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(13) A statement that the plan of conversion may be substantively amended or terminated by the board of directors with the concurrence of the ((~~supervisor of banking~~) director); and

(14) A statement that questions of account holders may be answered by telephoning or writing to the savings bank.

Sec. 372. RCW 32.32.265 and 1985 c 56 s 27 are each amended to read as follows:

Upon determination that an application for conversion is properly executed and is not materially incomplete, the ((~~supervisor~~) director) shall advise the applicant, in writing, to publish notices of the filing of the application. Promptly after receipt of the advice, the applicant shall furnish a written notice of the filing to each eligible account holder and also publish a notice of the filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

**NOTICE OF FILING OF AN APPLICATION
FOR APPROVAL TO CONVERT TO A
STOCK SAVINGS BANK**

Notice is hereby given that, pursuant to chapter 32.32 of the Revised Code of Washington

.....

(fill in name of applicant)

has filed an application with the ((~~Supervisor of Banking~~) Director of Financial Institutions) for approval to convert to the stock form of organization. Copies of the application have been delivered to (address).

Written comments, including objections to the plan of conversion and materials supporting the objections, from any account holder of the applicant or aggrieved person, will be considered by the ((~~supervisor~~))

director if filed within twenty business days after the date of this notice. Failure to make written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the aforementioned. The proposed plan of conversion and any comments thereon will be available for inspection by any account holder of the applicant at (address). A copy of the plan may also be inspected at each office of the applicant.

If a significant number of the applicant's account holders speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper. A notice sent by mail may be accompanied by the statement that the converting institution will not mail a subscription offering circular to an eligible account holder or a supplemental eligible account holder unless the eligible account holder or the supplemental eligible account holder, prior to the commencement of the subscription offering, requests the subscription offering circular by returning a postcard. The issuer of stock in the conversion shall pay the postage of this postcard and shall inform the eligible account holder or supplemental eligible holder that the postage is paid.

Sec. 373. RCW 32.32.270 and 1981 c 85 s 53 are each amended to read as follows:

Promptly after publication of the notices prescribed in RCW 32.32.265, the applicant shall file with the ((supervisor)) director the notice and affidavit of publication from each newspaper publisher in the manner the ((supervisor)) director shall require.

Sec. 374. RCW 32.32.275 and 1981 c 85 s 54 are each amended to read as follows:

Should the applicant desire to submit any information it deems to be of a confidential nature regarding any item or a part of any exhibit included in any application under this chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the ((supervisor)) director determines to withhold from public availability under RCW 42.17.250 through 42.17.340. The applicant shall be advised of any decision by the ((supervisor)) director to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the ((supervisor)) director deems necessary the ((supervisor)) director may comment on the confidential submissions in any public statement in connection

with the ~~((supervisor's))~~ director's decision on the application without prior notice to the applicant.

Sec. 375. RCW 32.32.280 and 1981 c 85 s 55 are each amended to read as follows:

No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the ~~((supervisor))~~ director of the application for conversion. No sale of these securities in the subscription offering may be made except by means of the final offering circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the final offering circular for the public offering or direct community marketing. The offering of shares in the direct community marketing may commence during the subscription offering upon the declaration of effectiveness by the ~~((supervisor))~~ director of the offering circular proposed for the community offering. This section shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

Sec. 376. RCW 32.32.285 and 1981 c 85 s 56 are each amended to read as follows:

Any preliminary offering circular for the subscription offering, the public offering, or the direct community marketing which has been filed with the ~~((supervisor))~~ director may be distributed to eligible account holders or supplemental eligible account holders and to others in connection with the offering after the ~~((supervisor))~~ director has advised the applicant in writing that the application is properly executed and is not materially incomplete under RCW 32.32.265. No final offering circular may be distributed until the offering circular has been declared effective by the ~~((supervisor))~~ director.

Sec. 377. RCW 32.32.295 and 1981 c 85 s 58 are each amended to read as follows:

The ~~((supervisor))~~ director shall review the price information required under RCW 32.32.290 in determining whether to give approval to an application for conversion. No representations may be made in any manner that the price information has been approved by the ~~((supervisor))~~ director or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the ~~((supervisor))~~ director or that the ~~((supervisor))~~ director has passed upon the accuracy or adequacy of any offering circular covering the shares.

Sec. 378. RCW 32.32.300 and 1981 c 85 s 59 are each amended to read as follows:

Underwriting commissions shall not exceed an amount or percentage per share acceptable to the ~~((supervisor))~~ director. No underwriting commission may be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small

that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts.

Sec. 379. RCW 32.32.305 and 1981 c 85 s 60 are each amended to read as follows:

In considering the pricing information required under RCW 32.32.290, the ~~((supervisor))~~ director shall apply the following guidelines:

(1) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the ~~((supervisor))~~ director;

(2) The materials shall contain data which are sufficient to support the conclusions reached therein;

(3) The materials shall contain a complete and detailed description of the appraisal methodology employed; and

(4) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings bank, the materials shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock savings banks or stock savings and loan associations, the materials shall demonstrate the appropriate comparability of the form and substance of the outstanding capital stock and the appropriate comparability of the existing stock savings banks and stock savings and loan associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

Sec. 380. RCW 32.32.310 and 1981 c 85 s 61 are each amended to read as follows:

In addition to the information required in RCW 32.32.305, the applicant shall submit information demonstrating to the satisfaction of the ~~((supervisor))~~ director the independence and expertise of any person preparing materials under RCW 32.32.305. However, a person will not be considered as lacking independence for the reason that the person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with the appraisal.

Sec. 381. RCW 32.32.315 and 1981 c 85 s 62 are each amended to read as follows:

Promptly after the ~~((supervisor))~~ director has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable), and other persons who may subscribe for the shares under the plan of conversion.

Sec. 382. RCW 32.32.325 and 1981 c 85 s 64 are each amended to read as follows:

The maximum subscription price stated on each order form distributed pursuant to RCW 32.32.315 shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the ~~((supervisor's))~~ director's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within this subscription price range, the applicant shall obtain an amendment to the ~~((supervisor's))~~ director's approval. If appropriate, the ~~((supervisor))~~ director shall condition the giving of amended approval by requiring a resolicitation of order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price.

Sec. 383. RCW 32.32.340 and 1981 c 85 s 67 are each amended to read as follows:

The sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within forty-five calendar days after the last day of the subscription period, unless extended by the ~~((supervisor))~~ director.

Sec. 384. RCW 32.32.345 and 1981 c 85 s 68 are each amended to read as follows:

An applicant that desires to convert in accordance with this chapter shall file copies of an application for approval in the form and number prescribed by the ~~((supervisor))~~ director.

Sec. 385. RCW 32.32.350 and 1981 c 85 s 69 are each amended to read as follows:

Any application for approval that is improperly executed, or that does not contain copies of a plan of conversion, amendments to the charter of the applicant in the form of new articles of incorporation, and preliminary offering circulars for the subscription offering and for the public offering or direct community marketing shall not be accepted for filing and shall be returned to the applicant. Any application for approval containing a materially incomplete plan of conversion or offering circular may be returned by the ~~((supervisor))~~ director to the applicant.

Sec. 386. RCW 32.32.360 and 1981 c 85 s 71 are each amended to read as follows:

The form of the application shall comply with the requirements of the ~~((supervisor))~~ director.

Sec. 387. RCW 32.32.370 and 1981 c 85 s 73 are each amended to read as follows:

The representations specified in RCW 32.32.365 shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, the director files with the ((~~supervisor~~)) director within ten business days after the filing of the application or amendment a statement describing those portions of the filing as to which he or she does not so represent.

Sec. 388. RCW 32.32.375 and 1981 c 85 s 74 are each amended to read as follows:

Every application shall furnish information in accordance with this chapter and with the requirements and forms prescribed by the ((~~supervisor~~)) director.

Sec. 389. RCW 32.32.395 and 1981 c 85 s 78 are each amended to read as follows:

The form and contents of any filing made under this chapter need conform only to the applicable requirements and forms prescribed by the ((~~supervisor~~)) director then in effect, and contain the information, including financial statements, required at the time the filing is made, notwithstanding subsequent changes, except as otherwise provided in any such amendment or in RCW 32.32.400.

Sec. 390. RCW 32.32.400 and 1981 c 85 s 79 are each amended to read as follows:

Whenever the ((~~supervisor~~)) director prohibits by order or otherwise the use of any filing under this chapter, the form and contents of any filing used thereafter shall conform to the requirements of the order.

Sec. 391. RCW 32.32.410 and 1981 c 85 s 81 are each amended to read as follows:

If any person who has not signed an application is named in the offering circular as about to become a director, the written consent of this person shall be filed with the ((~~supervisor~~)) director in the form the ((~~supervisor~~)) director prescribes.

Sec. 392. RCW 32.32.415 and 1981 c 85 s 82 are each amended to read as follows:

The date on which any documents are actually received by the office of the ((~~supervisor of banking~~)) director of financial institutions shall be the date of filing thereof.

Sec. 393. RCW 32.32.420 and 1981 c 85 s 83 are each amended to read as follows:

(1) The staff of the ((~~supervisor~~)) director shall be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of

discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Prefiling review of an application may be refused by the staff of the ~~((supervisor))~~ director if the review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this section, the staff of the ~~((supervisor))~~ director shall not undertake to prepare material for filing but shall limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

Sec. 394. RCW 32.32.425 and 1981 c 85 s 84 are each amended to read as follows:

From the ~~((supervisor's))~~ director of financial institutions' refusal to approve an application for conversion, the applicant may, within thirty days from the date of the mailing by the ~~((supervisor))~~ director of financial institutions of notice of refusal to approve, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general, and the ~~((supervisor of banking))~~ director of financial institutions by filing in the office of the ~~((supervisor))~~ director of financial institutions a notice that it appeals to this board from the ~~((supervisor's))~~ director of financial institutions' refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the ~~((supervisor's))~~ director of financial institutions', and shall be final.

Sec. 395. RCW 32.32.430 and 1981 c 85 s 85 are each amended to read as follows:

The applicant shall file such postconversion reports concerning its conversion as the ~~((supervisor))~~ director may require.

Sec. 396. RCW 32.32.450 and 1981 c 85 s 89 are each amended to read as follows:

No person for a period of three years following the date of the conversion may directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of any savings bank converted in accordance with this chapter without the prior written approval of the ~~((supervisor of banking))~~ director of financial institutions.

Sec. 397. RCW 32.32.455 and 1981 c 85 s 90 are each amended to read as follows:

RCW 32.32.440 and 32.32.445 shall not apply to a transfer, agreement or understanding to transfer, offer, or announcement of an offer or intent to make an offer which (1) pertains only to securities to be purchased pursuant to RCW 32.32.060, 32.32.150, or 32.32.175; and (2) has prior written approval of the ~~((supervisor))~~ director.

Sec. 398. RCW 32.32.465 and 1981 c 85 s 92 are each amended to read as follows:

Unless made applicable by the ((supervisor)) director by prior advice in writing, the prohibition contained in RCW 32.32.450 shall not apply to any offer or announcement of an offer which if consummated would result in acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding twelve-month period, of not more than one percent of the same class of securities.

Sec. 399. RCW 32.32.470 and 1981 c 85 s 93 are each amended to read as follows:

The ((supervisor)) director shall not approve an application involving an offer for, an announcement thereof, or an acquisition of any security of a converted savings bank submitted under RCW 32.32.450 if the ((supervisor)) director finds that the offer frustrates the purposes of this chapter, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the savings bank, is not consistent with savings banking under Title 32 RCW, or is otherwise violative of law or regulation.

Sec. 400. RCW 32.32.475 and 1981 c 85 s 94 are each amended to read as follows:

For willful violation or assistance of such a violation of any provision of RCW 32.32.440 through 32.32.470, any person who (1) has any connection with the management of a converting or converted savings bank, including any director, officer, employee, attorney, or agent, or (2) controls more than ten percent of the outstanding shares of any class of equity security or voting rights thereto of a converting or converted savings bank shall be subject to a civil penalty of not more than five hundred dollars (which penalty shall be cumulative to any other remedies) for each day that the violation continues, which penalty the ((supervisor)) director may recover by suit or otherwise for the ((supervisor's)) director's own use. The ((supervisor)) director in his or her discretion may, at any time before collection of the penalty (whether before or after the bringing of any action or other legal proceedings, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process thereof), compromise or remit in whole or in part the penalty.

Sec. 401. RCW 32.32.485 and 1981 c 85 s 96 are each amended to read as follows:

(1) An application for conversion under this chapter shall include amendments to the charter of the converting savings bank. The charter of the converted savings bank, as amended, shall be known after the conversion as the articles of incorporation of the converted savings bank. The articles of incorporation may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the converted savings bank and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the converted savings bank whether then or thereafter authorized. The articles of incorporation shall contain such other provisions not inconsistent with this chapter as the board of directors

of the converting savings bank shall determine and as shall be approved by the ~~((supervisor))~~ director of financial institutions.

(2) When all of the stock of a converting savings bank has been subscribed for in accordance with the plan and any amendments thereto, the board of trustees shall thereupon issue the stock and shall cause to be filed with the ~~((supervisor of banking))~~ director of financial institutions, in quadruplicate, a certificate subscribed and acknowledged by the persons who are to be directors of the converted savings bank, stating:

(a) That all of the stock of the converted mutual savings bank has been issued;

(b) That the attached articles of incorporation have been executed by all of the persons who are to be directors of the converted mutual savings bank;

(c) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the mutual savings bank has theretofore been located;

(d) The name, occupation, residence, and post office address of each signer of the certificate;

(e) The amount of the assets of the mutual savings bank, the amount of its liabilities, and the amount of its guaranty fund and nondivided profits as of the first day of the current calendar month; and

(f) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the converted savings bank and is free from all the disqualifications specified in the laws applicable to converted mutual savings banks.

(3) Upon the filing of the certificate in quadruplicate, the ~~((supervisor of banking))~~ director of financial institutions shall, within thirty days thereafter, if satisfied that the corporation has complied with all the provisions of this chapter, issue in quadruplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its articles of incorporation the business of a converted mutual savings bank. One of the ~~((supervisor's))~~ director of financial institutions' quadruplicate certificates of authorization shall be attached to each of the quadruplicate articles of incorporation, and one set of these shall be filed and retained by the ~~((supervisor of banking))~~ director of financial institutions, one set shall be filed in the office of the county auditor of the county in which the bank is located, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles the county auditor and secretary of state shall record the same; whereupon the conversion of the mutual savings bank shall be deemed complete, and the signers of the articles of incorporation and their successors shall be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to converted

mutual savings banks, and the time of existence of the corporation shall be perpetual, unless terminated pursuant to law.

Sec. 402. RCW 32.32.490 and 1985 c 56 s 28 are each amended to read as follows:

Amendments to the articles of incorporation of the converted savings bank shall be made only with the approvals of the (~~supervisor~~) director, of two-thirds of the directors of the savings bank, and of the holders of a majority of each class of the outstanding shares of capital stock or such greater percentage of these shares as may be specified in the articles of the converted savings bank.

Sec. 403. RCW 32.32.495 and 1985 c 56 s 29 are each amended to read as follows:

(1) Every converted savings bank shall be managed by not less than five directors, except that a bank having a capital of fifty thousand dollars or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the converted savings bank's bylaws but not later than May 15th of each year. If for any cause an election is not held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. Each director shall be a resident of a state of the United States. The directors shall meet at least nine times each year and whenever required by the (~~supervisor~~) director. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

(2) If the board of directors consists of nine or more members, in lieu of electing the entire number of directors annually, the converted savings bank's articles of incorporation or bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. A classification of directors shall not be effective prior to the first annual meeting of shareholders.

(3) Immediately upon election, each director shall take, subscribe, swear to, and file with the (~~(supervisor)~~) director an oath that he or she will, so far as the duty devolves upon him or her, diligently and honestly administer the affairs of the corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to the corporation.

(4) A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Sec. 404. RCW 32.32.500 and 1985 c 56 s 31 are each amended to read as follows:

A mutual savings bank or bank converted under this chapter may merge with, consolidate with, convert into, acquire the assets of, or sell its assets to any other financial institution chartered under Titles 30, 32, or 33 RCW or under the National Bank Act, as amended, or the National Housing Act, as amended, or to a holding company thereof, subject to (1) the approval of the (~~(supervisor of banking)~~) director of financial institutions if the surviving institution is one chartered under Title 30 or 32 RCW, or (2) approval of the (~~(supervisor of savings and loans)~~) director of financial institutions if the surviving institution is one chartered under Title 33 RCW, or (3) if the surviving institution is to be a national bank, the comptroller of currency under 12 U.S.C. Sec. 35, 12 U.S.C. Sec. 215, 12 U.S.C. Sec. 215a, and 12 U.S.C. Sec. 1828c, or (4) if the surviving institution is to be a federal savings and loan association, the Federal Home Loan Bank Board under 12 U.S.C. Sec. 1464 (d)(11), or (5) if the surviving institution is to be a bank holding company, the Federal Reserve Board under 12 U.S.C. Sec. 1842 (a) and (d).

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

Sec. 405. RCW 32.32.525 and 1983 c 44 s 4 are each amended to read as follows:

After July 26, 1981, no converted savings bank may make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless the security or purchase is necessary to prevent loss upon a debt previously contracted in good faith, in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. The prohibitions of this section do not apply to a purchase of shares approved by the (~~(supervisor)~~) director pursuant to RCW 32.32.210.

Sec. 406. RCW 32.34.010 and 1983 c 45 s 1 are each amended to read as follows:

(1) A domestic savings bank formed under this title may convert itself into a federal mutual or stock savings bank. The conversion shall be effected:

(a) In the case of a mutual savings bank, by the vote of two-thirds of the trustees at a regular or special meeting of the trustees called for such purpose;

(b) In the case of a stock savings bank, by the vote of a majority of the stockholders present, in person or by proxy, at a regular or special meeting of the stockholders called for such purpose.

(2) Notice of the meeting, stating the purpose thereof, shall be given the ~~((supervisor))~~ director at least thirty days prior to the meeting. If the conversion is authorized by the trustees or stockholders at the meeting, the trustees or stockholders are authorized and shall effect such action, and the officers of the savings bank shall execute all proper conveyances, documents, and other papers necessary or proper thereunto. If conversion is authorized, a copy of the minutes of the meeting shall be filed forthwith with the ~~((supervisor))~~ director.

(3) Upon consummation of the conversion, the successor federal savings bank shall succeed to all right, title, and interest of the mutual or stock bank in and to its assets and to its liabilities to the creditors of the savings bank. Upon the conversion, after the execution and delivery of all instruments of transfer, conveyance, and assignment, the domestic savings bank shall be deemed dissolved.

(4) Every federal savings bank, the home office of which is located in this state, and the savings accounts therein, have all the rights, powers, and privileges and are entitled to the same immunities and exemptions as pertain to savings banks organized under the laws of this state.

Sec. 407. RCW 32.34.020 and 1983 c 45 s 2 are each amended to read as follows:

(1) A federal savings bank, the home office of which is located in this state, may convert itself into a domestic savings bank under this title upon approval by the ~~((supervisor of banking))~~ director. For any such conversion, the federal savings bank shall proceed as provided in this chapter for the conversion of a domestic savings bank into a federal savings bank. The conversion shall be effected by the vote of a majority of the members or stockholders present, in person or by proxy, at a regular or special meeting of the members or stockholders called for such purpose.

(2) Upon consummation of the conversion, the successor domestic savings bank shall succeed to all right, title, and interest of the federal savings bank in and to its assets, and to its liabilities to the creditors of such federal savings bank.

Sec. 408. RCW 32.34.040 and 1985 c 56 s 34 are each amended to read as follows:

(1) No savings bank having capital stock may establish a holding company to own all its stock without the approval of the ~~((supervisor))~~ director. Upon tender of their shares of the converted savings bank, the shareholders of the

savings bank shall receive all the shares of the holding company which are outstanding at the time of this tender.

(2) Any company owning more than twenty-five percent of the outstanding voting stock of a savings bank doing business under this Title 32 RCW shall, in addition to the restrictions of RCW 32.32.228, be subject to regulation as a savings bank holding company. Any savings bank holding company which is not subject to regulation by the federal reserve board or the federal home loan bank board, and all holding company subsidiaries engaging in businesses which are not subject to regulation or licensing by the federal home loan bank board, the ~~((supervisor of savings and loan associations))~~ director, the commissioner of insurance, or the administrator authorized to regulate loan companies doing business under Title 31 RCW, will be subject to such regulation of accounting practices and of the qualifications of directors and officers, and such inspection and visitation by the ~~((supervisor of banking))~~ director as the ~~((supervisor))~~ director shall deem appropriate, subject to the limitations imposed on regulation, inspection, and visitation of a savings bank under this title. In addition, any savings bank holding company and all holding company subsidiaries will be subject to visitation by the ~~((supervisor of banking))~~ director as such shall deem appropriate, subject to the limitations imposed on visitation of a savings bank under this Title 32 RCW and under the supremacy clause of the Constitution of the United States. The savings bank subsidiary of this holding corporation may engage in subsequent mergers, consolidations, acquisitions, and conversions, only to the extent authorized by RCW 32.32.500, and only upon complying with the applicable requirements in RCW 32.34.030 and this chapter.

(3) In the event a savings bank forms a subsidiary to carry out any of the powers of savings banks under this title, any institution with which this subsidiary merges shall continue to be subject to regulation, inspection, and visitation by the ~~((supervisor of savings and loans))~~ director if the subsidiary is authorized to do business by Title 33 RCW.

Sec. 409. RCW 32.34.050 and 1985 c 56 s 35 are each amended to read as follows:

A savings bank not having capital stock may establish a business trust for the benefit of its depositors, with the approval of the ~~((supervisor))~~ director and subject to such rules ~~((and regulations))~~ as the ~~((supervisor))~~ director may adopt. The ~~((supervisor))~~ director may permit this business trust to become a mutual holding company owning all shares of an interim stock savings bank, the sole purpose of which shall be to merge into the mutual savings bank that formed the business trust. The depositors in an unconverted savings bank which has merged with the subsidiary of such a mutual holding company, in the event of a later conversion of this mutual holding company to the stock form, shall retain all their rights to their deposits in the savings bank, and shall also receive, without payment, nontransferrable rights to subscribe for the stock of the holding company, and rights to a liquidation account maintained by the holding company in proportion to their deposits in the savings bank, to the same extent that they

would receive these rights in a stock conversion of the savings bank as prescribed in chapter 32.32 RCW.

Sec. 410. RCW 32.40.010 and 1985 c 329 s 8 are each amended to read as follows:

(1) In conducting an examination of a savings bank chartered under Title 32 RCW, the ~~((supervisor of banking, deputy supervisor, or examiner))~~ director shall investigate and assess the record of performance of the savings bank in meeting the credit needs of the savings bank's entire community, including low and moderate-income neighborhoods. The ~~((supervisor))~~ director shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the savings bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the ~~((supervisor))~~ director in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the ~~((supervisor))~~ director shall consider, independent of any federal determination, the following factors in assessing the savings bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors or board of trustees in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) Other factors that, in the judgment of the ~~((supervisor))~~ director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The ~~((supervisor))~~ director shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each savings bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- (a) Excellent performance: 1
- (b) Good performance: 2
- (c) Satisfactory performance: 3
- (d) Inadequate performance: 4
- (e) Poor performance: 5

Sec. 411. RCW 32.40.020 and 1985 c 329 s 9 are each amended to read as follows:

Whenever the ~~((supervisor of banking))~~ director must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the ~~((supervisor))~~ director shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application.

Sec. 412. RCW 32.40.030 and 1985 c 329 s 10 are each amended to read as follows:

The ~~((supervisor of banking))~~ director shall adopt all rules necessary to implement RCW 32.40.010 and 32.40.020 by January 1, 1986.

Sec. 413. RCW 33.04.002 and 1982 c 3 s 1 are each amended to read as follows:

The legislature finds that the statutory law relating to savings and loan associations has not been generally updated or modernized since 1945; and, as a result, many changes to Title 33 RCW should now be made with respect to the powers and duties of the ~~((supervisor))~~ director; to the provisions relating to the organization, management and conversion of savings and loan associations; and to the powers and restrictions placed upon savings and loan associations to make investments. While it is the intent of the legislature to grant permissive investment powers to state-chartered savings and loan associations, it does not intend these associations to abandon the residential financing market in Washington. It, therefore, finds that the powers granted in ~~((this act))~~ chapter 3, Laws of 1982 are for the purpose of updating and modernizing the law

relating to savings and loan associations, thereby creating a more secure and responsive financial environment in which the residential home buyer will continue to obtain financing.

Sec. 414. RCW 33.04.005 and 1982 c 3 s 2 are each amended to read as follows:

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

(1) "Branch" means an established manned place of business or a manned mobile facility or other manned facility of an association, other than the principal office, at which deposits may be taken.

(2) "Depositor" means a person who deposits money in an association.

(3) "Domestic association" means a savings and loan association which is incorporated under the laws of this state.

(4) "Federal association" means a savings and loan association which is incorporated under federal law.

(5) "Foreign association" means a savings and loan association organized under the laws of another state.

(6)(a) "Member," in a mutual association, means a depositor or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(b) "Member," in a stock association, means a stockholder or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(7) "Mutual association" means an association formed without authority to issue stock.

(8) "Savings and loan association," "savings association" or "association," unless otherwise restricted, means a domestic or foreign association and includes a stock or a mutual association.

(9) "Stock association" means an association formed with the authority to issue stock.

(10) "Department" means department of financial institutions.

(11) "Director" means director of financial institutions.

Sec. 415. RCW 33.04.010 and 1982 c 3 s 3 are each amended to read as follows:

Whenever, in this title or any prior acts relating to savings and loan associations, the term "supervisor" or "supervisor of savings and loans" appears, it is understood that the director of ~~((the department of general administration))~~ financial institutions may act for and in lieu of the supervisor of savings and loans, if there is no supervisor of savings and loan associations duly qualified to act.

Sec. 416. RCW 33.04.020 and 1982 c 3 s 4 are each amended to read as follows:

The ~~((supervisor))~~ director:

(1) Shall be charged with the administration and enforcement of this title and shall have and exercise all powers necessary or convenient thereunto;

(2) Shall issue to each association doing business hereunder, when it shall have paid its annual license fee and be duly qualified otherwise, a certificate of authority authorizing it to transact business;

(3) Shall require of each association an annual statement and such other reports and statements as the ((supervisor)) director deems desirable, on forms to be furnished by the ((supervisor)) director;

(4) Shall require each association to conduct its business in compliance with the provisions of this title;

(5) Shall visit and examine into the affairs of every association, at least once in each biennium; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such association for such purposes. The ((supervisor)) director may accept in lieu of an examination the report of the examining division of the federal home loan bank board, or the report of the savings and loan department of another state, which has made and submitted a report of the condition of the affairs of the association, and if approved, the report shall have the same force and effect as though the examination were made by the ((supervisor)) director or one of his or her appointees;

(6) May accept or exchange any information or reports with the examining division of the federal home loan bank board or other like agency which may insure the accounts in an association or to which an association may belong or with the savings and loan department of another state which has authority to examine any association doing business in this state;

(7) May visit and examine into the affairs of any nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by the association; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporation for such purposes;

(8) May, in the ((supervisor's)) director's discretion, administer oaths to and to examine any person under oath concerning the affairs of any association or nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by an association and, in connection therewith, to issue subpoenas and require the attendance and testimony of any person or persons at any place within this state, and to require witnesses to produce any books, papers, documents, or other things under their control material to such examination; and

(9) Shall have power to commence and prosecute actions and proceedings to enforce the provisions of this title, to enjoin violations thereof, and to collect sums due to the state of Washington from any association.

Sec. 417. RCW 33.04.025 and 1982 c 3 s 5 are each amended to read as follows:

The ~~((supervisor))~~ director shall adopt uniform rules ~~((and regulations))~~ in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of associations and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. ~~((He))~~ The director shall mail a copy of the rules ~~((and regulations))~~ to each savings and loan association at its principal place of business. The person doing the mailing shall make and file his or her affidavit thereof in the office of the ~~((supervisor))~~ director.

Sec. 418. RCW 33.04.030 and 1945 c 235 s 96 are each amended to read as follows:

In event any person shall refuse to appear in compliance with any subpoena issued by the ~~((supervisor))~~ director or shall refuse to testify thereunder, the superior court of the state of Washington for the county in which such witness was required by said subpoena to appear, upon application of the ~~((supervisor))~~ director, shall have jurisdiction to compel such witness to attend and testify and to punish for contempt any witness not complying with the order of the court.

Sec. 419. RCW 33.04.042 and 1982 c 3 s 7 are each amended to read as follows:

(1) The ~~((supervisor))~~ director may issue and serve upon an association a notice of charges if in the opinion of the ~~((supervisor))~~ director the association:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the association;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the ~~((supervisor))~~ director in connection with the granting of any application or other request by the association or any written agreement made with the ~~((supervisor))~~ director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the association. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the ~~((supervisor))~~ director at the request of the association.

Unless the association appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the ~~((supervisor))~~ director finds that any violation or practice specified in the notice of charges has been established, the ~~((supervisor))~~ director may issue and serve upon the association an order to cease and desist from the violation or practice. The order may require the association and its directors, officers, employees, and agents to cease and desist from the violation or practice

and may require the association to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the association concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the ~~((supervisor))~~ director or a reviewing court.

Sec. 420. RCW 33.04.044 and 1982 c 3 s 8 are each amended to read as follows:

Whenever the ~~((supervisor))~~ director determines that the acts specified in RCW 33.04.042 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the association or to otherwise seriously prejudice the interests of its depositors, the ~~((supervisor))~~ director may also issue a temporary order requiring the association to cease and desist from the violation or practice. The order shall become effective upon service on the association and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 33.04.046 pending the completion of the administrative proceedings under the notice and until such time as the ~~((supervisor))~~ director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the association under RCW 33.04.042.

Sec. 421. RCW 33.04.048 and 1982 c 3 s 10 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 33.04.044, the ~~((supervisor))~~ director may apply to the superior court of the county of the principal place of business of the association for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 422. RCW 33.04.052 and 1982 c 3 s 11 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 33.04.042 may be held at such place as is designated by the ~~((supervisor))~~ director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the ~~((supervisor))~~ director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the ~~((supervisor))~~ director shall render a decision which shall include findings of fact upon which the decision is based and the ~~((supervisor))~~ director shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 33.04.042.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected association under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the ~~((supervisor))~~ director may at any time modify,

terminate, or set aside any order upon such notice and in such manner as the ((~~supervisor~~)) director deems proper. Upon filing the record, the ((~~supervisor~~)) director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 33.04.042, 33.04.044 or 33.04.048 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected association within ten days after the date of service of the order a written petition praying that the order of the ((~~supervisor~~)) director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the ((~~supervisor~~)) director and the ((~~supervisor~~)) director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the ((~~supervisor~~)) director except that the ((~~supervisor~~)) director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it is subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the ((~~supervisor~~)) director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 33.04.042 or 33.04.044 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

Sec. 423. RCW 33.04.054 and 1982 c 3 s 12 are each amended to read as follows:

The ((~~supervisor~~)) director may apply to the superior court of the county of the principal place of business of the association affected for the enforcement of any effective and outstanding order issued under RCW 33.04.042, 33.04.044, or 33.04.048, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 33.04.046 and 33.04.052.

Sec. 424. RCW 33.04.060 and 1988 c 202 s 32 are each amended to read as follows:

An association may petition the superior court of the state of Washington for Thurston county for the review of any decision, ruling, requirement or other action or determination of the ((~~supervisor~~)) director, by filing its complaint, duly verified, with the clerk of the court and serving a copy thereof upon the

~~((supervisor))~~ director. Upon the filing of the complaint, the clerk of the court shall docket the same as a cause pending therein.

The ~~((supervisor))~~ director may answer the complaint and the petitioner reply thereto, and the cause shall be heard before the court as in other civil actions. Both the petitioner and the ~~((supervisor))~~ director may seek appellate review of the decision of the court to the supreme court or the court of appeals of the state of Washington.

Sec. 425. RCW 33.04.110 and 1982 c 3 s 6 are each amended to read as follows:

(1) Except as otherwise provided in this section, all examination reports and all information obtained by the ~~((supervisor))~~ director and the ~~((supervisor's))~~ director's staff in conducting examinations of associations are confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the ~~((supervisor))~~ director may furnish in whole or in part examination reports prepared by the ~~((supervisor's))~~ director's office to federal agencies empowered to examine state associations, to savings and loan supervisory agencies of other states which have authority to examine associations doing business in this state, to the attorney general in his or her role as legal advisor to the ~~((supervisor))~~ director, to the examined association as provided in subsection (4) of this section, and to officials empowered to investigate criminal charges. If the ~~((supervisor))~~ director furnishes any examination report to officials empowered to investigate criminal charges, the ~~((supervisor))~~ director may only furnish that part of the report which is necessary and pertinent to the investigation, and the ~~((supervisor))~~ director may do this only after notifying the affected savings and loan association and any customer of the savings and loan association who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause. The ~~((supervisor))~~ director may also furnish in whole or in part examination reports concerning any association in danger of insolvency to the directors or officers of a potential acquiring party when, in the ~~((supervisor's))~~ director's opinion, it is necessary to do so in order to protect the interests of members, depositors, or borrowers of the examined association.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the ~~((division of savings and loan associations))~~ department of financial institutions and, except as provided in subsection (4) of this section, no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation:

PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the (~~((division of savings and loan associations))~~) department of financial institutions is designed for use in the supervision of the association, and the (~~((supervisor))~~) director may furnish a copy of the report to the savings and loan association examined. The report shall remain the property of the (~~((supervisor))~~) director and will be furnished to the association solely for its confidential use. Neither the association nor any of its directors, officers, or employees may disclose or make public in any manner the report or any portion thereof without permission of the board of directors of the examined association. The permission shall be entered in the minutes of the board.

(5) Examination reports and information obtained by the (~~((supervisor))~~) director and the (~~((supervisor's))~~) director's staff in conducting examinations 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))~~) director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the (~~((supervisor))~~) director.

(7) This section shall not apply to investigation reports prepared by the (~~((supervisor))~~) director and the (~~((supervisor's))~~) director's staff concerning an application for a new association or an application for a branch of an association. The (~~((supervisor))~~) director may adopt rules making confidential portions of such reports if in the (~~((supervisor's))~~) director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the (~~((supervisor))~~) director considers necessary to fully evaluate the application.

(8) Every person who intentionally violates any provision of this section is guilty of a gross misdemeanor.

Sec. 426. RCW 33.08.010 and 1959 c 280 s 1 are each amended to read as follows:

No person, firm, company, association, fiduciary, co-partnership, or corporation, either foreign or domestic, shall organize as, carry on or conduct the business of an association except in conformity with the terms and provisions of this title or unless incorporated as a savings and loan association under the laws of the United States or use in name or advertising any of the following:

Any collocation employing either or both of the words "building" or "loan" with one or more of the words "saving", "savings", "thrift", or words of similar import except in conformity with this title;

Any collocation employing one or more of the words "saving", "savings", "thrift" or words of similar import, with one or more of the words "association", "institution", "society", "company", "corporation", or words of similar import, or abbreviations thereof except in conformity with this title or unless authorized to

do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks; nor shall the word "federal" be used as a part of such name unless the user is incorporated as a savings and loan association under the laws of the United States.

Neither shall the words "saving", or "savings", be used in any name or advertising or to represent in any manner to indicate that ~~((his or its))~~ the business is of the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that ~~((his or its))~~ the business is that of an association unless authorized to do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks.

Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer, violates any provision of this section, shall be guilty of a gross misdemeanor. Such conduct shall also be deemed a nuisance and subject to abatement in the manner prescribed by law at the instance of the ~~((state supervisor of savings and loan associations))~~ director of financial institutions or any other public body or officer authorized to do so.

The provisions of this section shall have no application to use of any word or collocation of words or to any representation or advertising which had been adopted and lawfully used by any person, firm, company, association, fiduciary, co-partnership or corporation lawfully engaged in business at ~~((then))~~ on March 24, 1959.

Sec. 427. RCW 33.08.050 and 1982 c 3 s 16 are each amended to read as follows:

The incorporators shall deliver to the ~~((supervisor))~~ director triplicate originals of the articles of incorporation and duplicate copies of its proposed bylaws.

Sec. 428. RCW 33.08.055 and 1982 c 3 s 17 are each amended to read as follows:

When the incorporators of a domestic association deliver the articles of incorporation and bylaws to the ~~((supervisor))~~ director, the incorporators shall submit an application for a certificate of incorporation, signed and verified by the incorporators, together with the filing fee. The application shall set forth:

(1) The names and addresses of the incorporators and proposed directors and officers of the association;

(2) A statement of the character, financial responsibility, experience, and fitness of the directors and officers to engage in the association business;

(3) Statements of estimated receipts, expenditures, earnings, and financial condition of the association for the first two years or such longer period as the ~~((supervisor))~~ director may require;

(4) A showing that the association will have a reasonable chance to succeed in the market area in which it proposes to operate;

(5) A showing that the public convenience and advantage will be promoted by the formation of the proposed association; and

(6) Any other matters the ~~((supervisor))~~ director may require.

Sec. 429. RCW 33.08.060 and 1982 c 3 s 18 are each amended to read as follows:

Upon receipt of the articles of incorporation and bylaws, the ~~((supervisor))~~ director shall proceed to determine, from all sources of information and by such investigation as he or she may deem necessary, whether:

(1) The proposed articles and bylaws comply with all requirements of law;

(2) The incorporators and directors possess the qualifications required by this title;

(3) The incorporators have available for the operation of the business at the specified location sufficient cash assets;

(4) The general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purposes of this title;

(5) The public convenience and advantage will be promoted by allowing such association to be incorporated and engage in business in the market area indicated; and

(6) The population and industry of the market area afford reasonable promise of adequate support for the proposed association.

For the purpose of this investigation and determination, the incorporators, when delivering the articles and bylaws to the ~~((supervisor))~~ director, shall pay to the ~~((supervisor))~~ director an investigation fee, the amount of which shall be established by rule of the ~~((supervisor))~~ director.

Sec. 430. RCW 33.08.070 and 1988 c 202 s 33 are each amended to read as follows:

The ~~((supervisor))~~ director, not later than six months after receipt of the proposed articles and bylaws shall endorse upon each copy thereof the word "approved" or "refused" and the date thereof. In case of refusal, he or she shall forthwith return one copy of the articles and bylaws to the incorporators, and the refusal shall be final unless the incorporators, or a majority of them, within thirty days after the refusal, appeal to the superior court of Thurston county. The appeal may be accomplished by the incorporators preparing a notice of appeal, serving a copy of it upon the ~~((supervisor))~~ director, and filing the notice with the clerk of the court, whereupon the clerk, under the direction of the judge, shall give notice to the appellants and to the ~~((supervisor))~~ director of a date for the hearing of the appeal. The appeal shall be tried de novo by the court. At the hearing a record shall be kept of the evidence adduced, and the decision of the court shall be final unless appellate review is sought as in other cases.

Sec. 431. RCW 33.08.080 and 1982 c 3 s 19 are each amended to read as follows:

If the ((supervisor)) director approves the incorporation of the proposed association, the ((supervisor)) director shall forthwith return two copies of the articles of incorporation and one copy of the bylaws to the incorporators, retaining the others as a part of the files of the ((supervisor's)) director's office. The incorporators, thereupon, shall file one set of the articles with the secretary of state and retain the other set of the articles of incorporation and the bylaws as a part of its minute records, paying to the secretary of state such fees and charges as are required by law. Upon receiving an original set of the approved articles of incorporation, duly endorsed by the ((supervisor)) director as herein provided, together with the required fees, the secretary of state shall issue the secretary of state's certificate of incorporation and deliver the same to the incorporators, whereupon the corporate existence of the association shall begin. Unless an association whose articles of incorporation and bylaws have been approved by the ((supervisor)) director shall engage in business within two years from the date of such approval, its right to engage in business shall be deemed revoked and of no effect. In the ((supervisor's)) director's discretion, the two-year period in which the association must commence business may be extended for a reasonable period of time, which shall not exceed one additional year.

Sec. 432. RCW 33.08.090 and 1982 c 3 s 20 are each amended to read as follows:

The members, at any meeting called for the purpose, may amend the articles of incorporation of the association by a majority vote of the members present, in person or in proxy. The amended articles shall be filed with the ((supervisor)) director and be subject to the same procedure of approval, refusal, appeal, and filing with the secretary of state as provided for the original articles of incorporation. Proposed amendments of the articles of incorporation shall be submitted to the ((supervisor)) director at least thirty days prior to the meeting of the members.

If the amendments include a change in the association's corporate name, the association shall give notice by mail to each association doing business within this state at its principal place of business of the filing of the amended articles. Persons interested in protesting an amendment changing the association's corporate name may contact the ((supervisor)) director in person or by writing prior to a date which shall be given in the notice.

Sec. 433. RCW 33.08.100 and 1967 c 49 s 1 are each amended to read as follows:

The bylaws adopted by the incorporators and approved by the ((supervisor)) director shall be the bylaws of the association. The members, at any meeting called for the purpose, may amend the bylaws of the association on a majority vote of the members present, in person or by proxy, or the directors at any regular or special meeting called under the provisions of RCW 33.16.090 may amend the bylaws of the association on a two-thirds majority vote of the directors. Proposed amendments of the bylaws shall be submitted to the

((supervisor)) director in duplicate at least thirty days prior to the meeting at which the amendments will be considered. The ((supervisor)) director shall endorse thereon the word "approved" or "disapproved" and return one copy to the association within the thirty day period prior to the meeting. Amendments of the bylaws which have been approved by the ((supervisor)) director shall become effective after being adopted by the board or the members. The ((supervisor)) director shall be advised of the effective date.

Sec. 434. RCW 33.08.110 and 1982 c 3 s 21 are each amended to read as follows:

An association with the written approval of the ((supervisor)) director, may establish and operate branches in any place within the state.

An association desiring to establish a branch shall file a written application therefor with the ((supervisor)) director, who shall approve or disapprove the application within four months after receipt.

The ((supervisor's)) director's approval shall be conditioned on a finding that the resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the contingent fund, loss reserves and guaranty stock are less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank. If the application for a branch is not approved, the association shall have the right to appeal in the same manner and within the same time as provided by RCW 33.08.070 as now or hereafter amended. The association when delivering the application to the ((supervisor)) director shall transmit to the ((supervisor)) director a check in an amount established by rule to cover the expense of the investigation. An association shall not move any office more than two miles from its existing location without prior approval of the ((supervisor)) director.

The board of directors of an association, after notice to the ((supervisor)) director, may discontinue the operation of a branch. The association shall keep the ((supervisor)) director informed in the matter and shall notify the ((supervisor)) director of the date operation of the branch is discontinued.

Sec. 435. RCW 33.12.010 and 1982 c 3 s 22 are each amended to read as follows:

An association shall have the same capacity to act as possessed by natural persons. An association has authority to perform such acts as are necessary or proper to accomplish its purposes.

In addition to any other power an association may have, an association has authority:

- (1) To have and alter a corporate seal;
- (2) To continue as an association for the time limited in its articles of incorporation or, if no such time limit is specified, then perpetually;

- (3) To sue or be sued in its corporate name;
- (4) To acquire, hold, sell, dispose of, pledge, mortgage, or encumber property, as its interests and purposes may require;
- (5) To conduct business in this state and elsewhere as may be permitted by law and, to this end, to comply with any law, regulation, or other requirements incident thereto;
- (6) To acquire capital in the form of deposits, shares, or other accounts for fixed, minimum or indefinite periods of time as are authorized by its bylaws, and may issue such passbooks, statements, time certificates of deposit, or other evidence of accounts;
- (7) To pay interest;
- (8) To charge reasonable service fees for services provided as part of its business;
- (9) To borrow money and to pledge, mortgage, or hypothecate its properties and securities in connection therewith;
- (10) To collect or protest promissory notes or bills of exchange owned or held as collateral by the association;
- (11) To let vaults, safes, boxes, or other receptacles for the safekeeping or storage of personal property, subject to the laws and regulations applicable to and with the powers possessed by safe deposit companies; and to act as escrow holder;
- (12) To act as fiscal agent for the United States of America; to purchase, own, vote, or sell stock in, or act as fiscal agent for any federal home loan bank, the federal housing administration, home owners' loan corporation, or other state or federal agency, organized under the authority of the United States or of the state of Washington and authorized to loan to or act as fiscal agent for associations or to insure savings accounts or mortgages; and in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated by such federal or state agency and to execute any contracts and pay any charges in connection therewith;
- (13) To procure insurance of its mortgages and of its accounts from any state or federal corporation or agency authorized to write such insurance and, in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated and to execute any contracts and pay any premiums required in connection therewith;
- (14) To loan money and to sell any of its notes or other evidences of indebtedness, together with the collateral securing the same;
- (15) To make, adopt, and amend bylaws for the management of its property and the conduct of its business;
- (16) To deposit moneys and securities in any other association or any bank or savings bank or other like depository;
- (17) To dissolve and wind up its business;

(18) To collect or compromise debts due to it and, in so doing, to apply to the indebtedness the accounts of the debtors, and to receive, as collateral or otherwise, other securities, property or property rights of any kind or nature;

(19) To become a member of, deal with, or make reasonable payments or contribution to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable conditions of eligibility;

(20) To sell money orders, travelers checks and similar instruments as agent for any organization empowered to sell such instruments through agents within this state and to receive money for transmission through a federal home loan bank;

(21) To service loans and investments for others;

(22) To sell and to purchase mortgages or other loans, including participating interests therein;

(23) To use abbreviations, words or symbols in connection with any document of any nature and on checks, proxies, notices and other instruments which abbreviations, words, or symbols shall have the same force and legal effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of the state and all other purposes;

(24) To conduct a trust business under rules adopted by the ~~((supervisor))~~ director pursuant to chapter 34.05 RCW; and

(25) To exercise, by and through its board of directors and duly authorized officers and agents, all such incidental powers as may be necessary to carry on the business of the association.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere by this title.

Sec. 436. RCW 33.12.014 and 1982 c 3 s 24 are each amended to read as follows:

Notwithstanding any other provision of law, in addition to all powers, express or implied, that an association has under this title, the ~~((supervisor))~~ director may make reasonable rules authorizing an association to exercise any of the powers conferred at the time of the adoption of the rules upon a federal savings and loan association doing business in this state, or may modify or reduce reserve or other requirements if an association is insured by the federal savings and loan insurance corporation, if the ~~((supervisor))~~ director finds that the exercise of the power:

(1) Serves the convenience and advantage of depositors and borrowers; and

(2) Maintains the fairness of competition and parity between state-chartered savings and loan associations and federally-chartered savings and loan associations.

Sec. 437. RCW 33.12.060 and 1985 c 239 s 1 are each amended to read as follows:

(1) An association shall make no loan to or sell to or purchase any real property or securities from:

(a) Any director, officer, agent, or employee of an association;

(b) Any former director or incorporator of the association within one year of the termination of the relationship without the prior written approval of the ~~((supervisor))~~ director;

(c) Any party involved, either directly or indirectly, in a stock tender offer for acquisition of the association, as determined by the ~~((supervisor))~~ director, without the prior written approval of the ~~((supervisor))~~ director; or

(d) Any public officer or public employee whose duties have to do with the supervision, regulation, or insurance of the association or its savings accounts.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Loans secured by the pledge or assignment of the savings account of the borrowing member;

(b) Loans made to directors, officers, agents, or employees of the association upon their property which is occupied principally by such director, officer, agent, or employee as a home, the amount of such loan to be based upon the appraised value of said property as established by two independent appraisers who are not officers, agents, directors, employees, or appraisers of the association;

(c) Loans made to directors, officers, or employees of the association upon their mobile dwelling, which is occupied principally by such director, officer, or employee as a home, the amount of such loan to be based upon the appraised value of the dwelling as established by two independent appraisers who are not directors, officers, employees, or appraisers of the association;

(d) Loans made to directors, officers, or employees of the association for home or property repairs, alterations, improvements, or additions, or home furnishings or appliances, for a residence which is occupied principally by such director, officer, or employee as a home;

(e) Loans made to directors, officers, or employees of the association for the payment of expenses of vocational training or college or university education; nor to

(f) Any other loans made to directors, officers, or employees of the association: PROVIDED, That the total value of the loans made or obligations acquired under authority of this section for any one director, officer, or employee shall not exceed such amount as prescribed by the ~~((supervisor))~~ director under ~~((regulations))~~ rules adopted under the administrative procedure act, chapter 34.05 RCW. No loan may be made, credit extended, or obligation acquired unless the board of directors of the association has approved a resolution authorizing the same by a majority vote at a meeting of the board held within sixty days prior to the making or acquisition of the loan or obligation, and the vote and resolution shall be entered in the corporate minutes.

(3) A loan to or a purchase or sale to or from a partnership or corporation fifteen percent of which is owned by any one director, officer, agent, or employee of the association or twenty-five percent of which is owned by any

combination of directors, officers, agents, or employees of the association shall be deemed a loan to or a purchase or sale to or from such director, officer, agent, or employee within the meaning of this section except when the transaction occurred without the knowledge or against the protest of such director, officer, agent, or employee of the association.

Sec. 438. RCW 33.12.140 and 1982 c 3 s 26 are each amended to read as follows:

Before any association is authorized to receive deposits or transact any business, its incorporators shall create an expense fund, in such amount as the ~~((supervisor))~~ director may determine, from which the expense of organizing the association and its operating expenses may be paid until such time as its earnings are sufficient to pay its operating expenses, and the incorporators shall enter into an undertaking with the ~~((supervisor))~~ director to make such further contributions to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings.

Before any mutual association is authorized to receive deposits or transact any business, its incorporators shall create a contingent fund for the protection of its members against investment losses, in an amount to be determined by the ~~((supervisor))~~ director.

The contingent fund shall consist of payments in cash made by the incorporators as provided in this section and of all sums credited thereto from the earnings of the association as hereinafter required.

Prior to the liquidation of any mutual association the contingent fund shall not be encroached upon in any manner except for losses and for the repayment of contributions made by the incorporators.

No repayment of the contribution of incorporators to the contingent fund shall be made until the net balance credited to the contingent fund from earnings of the association, after such repayment, equals five percent of the amount due members.

The incorporators may receive interest upon the amount of their contributions to the contingent fund at the same rate as is paid, from time to time, to savings members.

The amounts contributed to the contingent fund by the incorporators shall not constitute a liability of the association except as hereinafter provided, and any loss sustained by the association in excess of that portion of the contingent fund created from earnings may be charged against such contributions pro rata.

Sec. 439. RCW 33.16.040 and 1982 c 3 s 30 are each amended to read as follows:

If the ~~((supervisor))~~ director shall notify the board of directors of any association in writing, that he or she has information that any director, officer, or employee of such association is dishonest, reckless, or incompetent or is failing to perform any duty of his or her office, the board shall meet and consider such matter forthwith and the ~~((supervisor))~~ director shall have notice

of the time and place of such meeting. If the board shall find the ~~((supervisor's))~~ director's objection to be well founded, such director, officer, or employee shall be removed immediately. If the board does not remove the director, officer, or employee against whom the objections have been filed, or if the board fails to meet, consider or act upon the objections within twenty days after receiving the same, the ~~((supervisor))~~ director may forthwith or within twenty days thereafter, remove such individual by complying with the administrative procedure act, chapter 34.05 RCW. If the ~~((supervisor))~~ director feels that the public interest or safety of the association requires the immediate removal of such individual, the ~~((supervisor))~~ director may petition the superior court for a temporary injunction suspending the performance of the individual as a director pending the administrative procedure hearing.

Sec. 440. RCW 33.16.120 and 1982 c 3 s 35 are each amended to read as follows:

The board of directors shall cause to be prepared, from the books of the association, a statement of assets and of liabilities, at the end of the association's fiscal year.

The board shall also cause to be prepared, certified, and filed with the ~~((supervisor))~~ director, upon blanks to be furnished by the ~~((supervisor))~~ director, such reports and statements as the ~~((supervisor))~~ director, from time to time, may require.

Sec. 441. RCW 33.16.130 and 1979 c 113 s 4 are each amended to read as follows:

The board of directors of every association shall procure a bond or bonds, covering all of its active officers, agents, and employees, whether or not they draw salary or compensation, with duly qualified corporate surety authorized to do business in the state of Washington, conditioned that the surety will indemnify and save harmless the association against any and all loss or losses arising through the larceny, theft, embezzlement, or other fraudulent or dishonest act or acts of any such officer, agent, or employee. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the corporate surety. A deductible amount may be applied separately to one or more bonding agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond).

Such bond or bonds shall be in such amount, as to each of said officers or employees, as the directors shall deem advisable, and said bond or bonds shall be subject to the approval of the ~~((supervisor))~~ director and shall be filed with him or her. The board shall review such bond, or bonds, at its regular meeting in January of each year, and by resolution determine such bond coverage for the ensuing year.

Sec. 442. RCW 33.20.130 and 1945 c 235 s 53 are each amended to read as follows:

When any savings member shall have neither paid in nor withdrawn any funds from his or her savings account in the association for seven consecutive years, and his or her whereabouts is unknown to the association and he or she shall not respond to a letter from the association inquiring as to his or her whereabouts, sent by registered mail to his or her last known address, the association may transfer his or her account to a "Dormant Accounts" fund. Any savings account in the "Dormant Accounts" fund shall not participate in the earnings of the association except by permissive action of the directors of the association. The member, or his or her or its executor, administrator, successors or assigns, may claim the amount so transferred from his or her account to the dormant accounts fund at any time after such transfer. Should the association be placed in liquidation while any savings account shall remain credited in the dormant accounts fund and before any valid claim shall have been made thereto, as hereinabove provided, such savings account so credited, upon order of the ((~~supervisor~~) director) and without any other escheat proceedings, shall escheat to the state of Washington.

Sec. 443. RCW 33.20.150 and 1982 c 3 s 41 are each amended to read as follows:

The deposits paid into an association, together with any interest credited thereon, shall be repaid to the depositors thereof respectively, or to their legal representatives, upon request.

If, in the judgment of the board, circumstances warrant deferment of the payment of withdrawals from savings accounts to a later date, thereafter withdrawals shall be paid proportionately, on a percentage basis, to all depositors requesting withdrawal until full withdrawal requests are paid to all depositors. A board resolution of deferment shall not affect the payments of withdrawals from federal tax and loan accounts.

The board shall, however, have the right in its discretion, where need is shown, to pay not exceeding one hundred dollars to any account holder in one month.

If, upon examination, the ((~~supervisor~~) director) finds that further postponement of withdrawals is unwarranted, the ((~~supervisor~~) director) may order the association to resume full payment of withdrawals and cancel all written withdrawal requests. Such order shall be in writing.

The association's failure, during a period of postponement, to pay withdrawal requests shall not authorize the ((~~supervisor~~) director) to take charge of or liquidate the association.

Sec. 444. RCW 33.20.170 and 1945 c 235 s 99 are each amended to read as follows:

The ((~~supervisor~~) director) further is empowered, if in his or her judgment the circumstances warrant it, to issue in writing a declaration that an acute

business depression, state of panic, or economic emergency exists, in which event the directors of any association, state or federal, within the state may limit withdrawals by resolution, subject to the following conditions; that incoming funds shall be applied:

First, to the payment of operating expenses, indebtedness, taxes, insurance, and to the necessary charges for the protection of the association and its investments;

Second, to the payment to members of emergency withdrawals not exceeding twenty-five dollars per month to any member. The board of directors of any association, with the prior written approval of the ((~~supervisor~~)) director, by resolution may authorize the payment of emergency withdrawals not exceeding one hundred dollars per month to any member;

Third, to the payment of dividends on the savings of its members;

Fourth, three-fourths of all remaining receipts of the association, except interest payments, shall be applied to the payment of withdrawals, until all withdrawal requests have been paid.

All such withdrawal payments shall be made to members having withdrawal requests on file in proportion to the amount of such withdrawal requests.

Sec. 445. RCW 33.24.010 and 1982 c 3 s 45 are each amended to read as follows:

An association may invest its funds only as provided in this chapter.

It shall not invest more than two and a half percent of its assets in any loan or obligation to any one person, except with the written approval of the ((~~supervisor~~)) director.

Sec. 446. RCW 33.24.025 and 1989 c 97 s 3 are each amended to read as follows:

Except as may be limited by the ((~~supervisor~~)) director 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. 447. RCW 33.24.360 and 1982 c 3 s 54 are each amended to read as follows:

(1) It is unlawful for any acquiring party to acquire control of an association until thirty days after the date of filing with the ((~~supervisor~~)) director an application containing substantially all of the following information and any

additional information that the ((~~supervisor~~) director) may prescribe as necessary or appropriate in the public interest or for the protection of deposit account holders, borrowers or stockholders:

(a) The identity, character, and experience of each acquiring party by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each acquiring party involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which such acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition and, 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, a description of the transaction and the names of the parties. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the ((~~supervisor~~) director) shall not disclose the name of the lender to the public;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the association to sell its assets, to merge it with any company, or to make any other major changes in its business or corporate structure or management;

(f) The identification of any persons employed, retained or to be compensated by the acquiring party, or by any person on his or her behalf, who makes solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and brief description of the terms of such employment, retainer, or arrangements for compensation;

(g) Copies of all invitations for tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

When an unincorporated company is required to file the statements under (1) (a), (b), and (f) of this section, the ((~~supervisor~~) director) may require that the information be given with respect to each partner of a partnership or limited partnership, by each member of a syndicate or group, and by each person who controls a partner or member. When an incorporated company is required to file the statements under (1) (a), (b), and (f) of this section, the ((~~supervisor~~) director) may require that the information be given for the corporation and for each officer and director of the corporation and for each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation. If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77a), as amended, or in circumstances requiring the disclosure of similar information under the federal securities exchange act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 77b), as amended, or in an application filed with the federal home loan bank board requiring similar

disclosure, such registration statement or application may be filed with the ~~((supervisor))~~ director in lieu of the requirements of this section.

(2) The ~~((supervisor))~~ director shall give notice by mail to all associations doing business within the state of the filing of an application to acquire control of an association. The association shall transmit a check to the ~~((supervisor))~~ director for two hundred dollars when filing the application to cover the expense of notification. Persons interested in protesting the application may contact the ~~((supervisor))~~ director in person or by writing prior to a date which shall be given in the notice.

Sec. 448. RCW 33.24.370 and 1982 c 3 s 55 are each amended to read as follows:

The ~~((supervisor))~~ director may within thirty days after the date of filing of the application under RCW 33.24.360, file an action or proceeding in superior court to prevent the pending acquisition of control if the ~~((supervisor))~~ director finds any of the following:

(1) The acquisition would substantially lessen competition or would in any manner be in restraint of trade or would result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the state of Washington, unless the ~~((supervisor))~~ director also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(2) The poor financial condition of any acquiring party might jeopardize the financial stability of the association being acquired or might prejudice the interests of the depositors, borrowers, or stockholders of the association or is not in the public interest;

(3) The plan or proposal under which the acquiring party intends to liquidate the association, to sell its assets, or to merge it with any person or company, or to make any other major change in its business or corporate structure or management, is not fair and reasonable to the association's depositors, borrowers, or stockholders or is not in the public interest; or

(4) The competence, experience and integrity of any acquiring party who would control the operation of the association indicates that approval would not be in the interest of the association's depositors, borrowers, or stockholders nor in the public interest.

Sec. 449. RCW 33.28.020 and 1982 c 3 s 57 are each amended to read as follows:

The ~~((supervisor))~~ director shall collect from each association a fee, the amount of which shall be set by rule, to cover the actual cost of examinations and supervision.

Sec. 450. RCW 33.32.020 and 1982 c 3 s 59 are each amended to read as follows:

Unless prohibited by the laws of the state in which it is incorporated, a foreign association or like corporation authorized to do business in this state which, by the laws of the state in which it is incorporated, is required to be examined or to make reports to officers of such state, after each such examination or on the making of each such report, shall furnish to the ~~((supervisor))~~ director a copy of such examination or report, certified by the officer of the state making such examination or receiving the report.

Sec. 451. RCW 33.32.030 and 1982 c 3 s 60 are each amended to read as follows:

Except as to those matters relating strictly to its internal management which are governed by provisions of the law of the state of its incorporation inconsistent with this title, a foreign association or like corporation authorized to transact business in this state shall conduct its business in conformance with the provisions of this title and all requirements of the ~~((supervisor))~~ director.

All agreements made by any foreign association or like corporation doing business in this state with any resident of this state shall be deemed and construed to be made within this state.

Sec. 452. RCW 33.32.050 and 1945 c 235 s 84 are each amended to read as follows:

No foreign savings and loan association or like corporation shall do business in this state until it shall file with the ~~((supervisor))~~ director a written irrevocable power of attorney providing that service upon the ~~((supervisor))~~ director of any process issued against it by any court in this state shall constitute valid service of such process upon it. Such service shall be had by serving upon the ~~((supervisor))~~ director two copies of such summons or other process, together with the sum of two dollars. The ~~((supervisor))~~ director, upon receipt of any such summons or other process, shall forthwith transmit, by registered mail, one copy thereof to the principal office of such foreign association or corporation.

Sec. 453. RCW 33.36.060 and 1982 c 3 s 65 are each amended to read as follows:

Any person who, for the purpose of concealing any material fact, suppresses any evidence or abstract, removes, mutilates, destroys, or secretes any book, paper or record of an association, or of the ~~((supervisor))~~ director, or of anyone connected with the association or the office of the ~~((supervisor))~~ director, is guilty of a class C felony as provided in chapter 9A.20 RCW.

Sec. 454. RCW 33.40.010 and 1949 c 20 s 9 are each amended to read as follows:

Any domestic association may determine to enter upon voluntary liquidation, to transfer its assets and liabilities to another association, to merge with another association, to segregate its assets into classes, to charge off its losses in excess of its reserves.

Any such liquidation, transfer, merger, segregation, or charge-off shall be effected by the vote of a majority in amount of the members present, in person

or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the ~~((supervisor))~~ director at least thirty days prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such liquidation, transfer, merger, segregation, or charge-off be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto.

Sec. 455. RCW 33.40.020 and 1982 c 3 s 66 are each amended to read as follows:

Whenever it appears to the ~~((supervisor))~~ director that any domestic association is in an unsound condition or is conducting its business in an unsafe manner or is refusing to submit its books, papers, or concerns to lawful inspection, or that any director or officer thereof refuses to submit to examination on oath touching its concerns and affairs or that it has failed to carry out any authorized order or direction of the ~~((supervisor))~~ director, the ~~((supervisor))~~ director may give notice to the association so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and, if such association or such director or officer fails to correct the condition, offense, or delinquency within a reasonable time, as determined by the ~~((supervisor))~~ director, the ~~((supervisor))~~ director may take possession of the association.

Sec. 456. RCW 33.40.030 and 1945 c 235 s 104 are each amended to read as follows:

Whenever it shall appear to the ~~((supervisor))~~ director that any association is in an unsound or unsafe condition to continue business or is insolvent, the ~~((supervisor))~~ director may take possession thereof without notice.

Sec. 457. RCW 33.40.040 and 1982 c 3 s 67 are each amended to read as follows:

Upon the ~~((supervisor))~~ director taking possession of any domestic association, the ~~((supervisor))~~ director shall proceed to liquidate the association unless, in the ~~((supervisor's))~~ director's discretion, the ~~((supervisor))~~ director shall determine to call a meeting of the members to consider either a proportionate charge-off against the deposit accounts to permit the association thereafter to continue in business, or whether the association should proceed to voluntary liquidation under the management of its board of directors. In such event, if the ~~((supervisor))~~ director approves the decision of a majority in amount of the members present and voting, the ~~((supervisor))~~ director shall order such action to be taken.

During any period of voluntary liquidation, the ~~((supervisor))~~ director may take possession of the association and its assets and complete the liquidation whenever, in the ~~((supervisor's))~~ director's discretion, this seems advisable.

Sec. 458. RCW 33.40.050 and 1982 c 3 s 68 are each amended to read as follows:

Whenever the ((supervisor)) director determines to liquidate the affairs of a domestic association, the ((supervisor)) director shall cause the attorney general to present to the superior court of the county in which the association has its principal place of business a written petition setting forth the date of the taking of possession, the reasons therefor, and other material facts concerning the affairs of the association and, if the court determines that the association should be liquidated, it shall appoint the ((supervisor)) director, or other responsible person as recommended by the ((supervisor)) director, as the liquidator of the association and fix and require a bond to be given by the liquidator conditioned for the faithful performance of the duties as such liquidator, but if the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, the court upon the request of the ((supervisor)) director may tender to the federal savings and loan insurance corporation the appointment as liquidator.

Upon the filing with and approval by the court of the bond, the ((supervisor)) director or other person appointed shall enter upon the duties as liquidator of the affairs of the association, and, under the direction of the court, shall administer and liquidate the assets thereof and apply the same to the payment of the expenses of liquidation and the debts of the association, and distribute the remainder to the deposit accounts proportionately.

If the court tenders the appointment as liquidator to the federal savings and loan insurance corporation, and if the insurance corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of an association, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of Title IV of the National Housing Act, as now or hereafter amended. In any liquidation proceeding in which the insurance corporation is the liquidator, it may proceed to liquidate without being subject to the control of the court and without bond.

Sec. 459. RCW 33.40.070 and 1982 c 3 s 69 are each amended to read as follows:

The liquidator, upon the approval of the court, may sell, discount, or compromise debts of the association and claims against its debtors. The liquidator, with the approval of the court, may lease, operate, repair, exchange, or sell, either for cash or upon terms, the real and personal property of the association.

The liquidator, with the approval of the court, when funds are available, may pay savings members whose balances amount to not more than five dollars, the full amount of the balances.

Checks issued or payments held by the liquidator which remain undelivered for six months following the final liquidation dividend shall be deposited with

the ~~((supervisor))~~ director, after which the liquidator shall be discharged by the court. During ten years thereafter, the ~~((supervisor))~~ director shall deliver the checks or payments, or the ~~((supervisor's))~~ director's own checks in lieu thereof, to the payee, or his or her legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the ~~((supervisor))~~ director shall cancel all such checks or payments remaining in the ~~((supervisor's))~~ director's possession and issue a check against the account for the amount thereof, payable to the state treasurer, and deliver it to the state treasurer. Such payment shall escheat to the state, without further legal proceedings.

Sec. 460. RCW 33.40.075 and 1982 c 3 s 70 are each amended to read as follows:

All funds received by the ~~((supervisor))~~ director from liquidations may be invested by the ~~((supervisor))~~ director. The earnings from the moneys so held may be applied toward defraying the expenses incurred in the liquidations.

Sec. 461. RCW 33.40.080 and 1945 c 235 s 109 are each amended to read as follows:

Upon the termination of any liquidation proceeding, any files, records, documents, books of account, or other papers in the possession of the liquidator shall be surrendered into the possession of the ~~((supervisor))~~ director, who, in his or her discretion at any time after the expiration of one year, may destroy any of such files, records, documents, books of account or other papers which appear to him or her to be obsolete or unnecessary for future reference.

Sec. 462. RCW 33.40.110 and 1982 c 3 s 71 are each amended to read as follows:

In a voluntary liquidation of a domestic association, checks issued in the liquidation or funds representing liquidating dividends or otherwise which remain undelivered for six months following the final liquidating dividend, shall be deposited with the ~~((supervisor))~~ director, together with any files, records, documents, books of account, or other papers of the association. The ~~((supervisor))~~ director, at any time after one year from delivery, may destroy any of such files, records, documents, books of account, or other papers which appear to the ~~((supervisor))~~ director to be obsolete or unnecessary for future reference. During ten years thereafter, the ~~((supervisor))~~ director shall deliver such checks, or the ~~((supervisor's))~~ director's own checks in lieu thereof, or portions of such funds to the payee, or the payee's legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the ~~((supervisor))~~ director shall cancel all such checks remaining in the ~~((supervisor's))~~ director's possession and issue a check payable to the state treasurer for the amount thereof together with any other liquidating funds, and deliver them to the state treasurer. Such payment shall escheat to the state without further legal proceedings.

Sec. 463. RCW 33.40.120 and 1988 c 202 s 34 are each amended to read as follows:

The court, upon notice and hearing, may remove the liquidator for cause. Appellate review of the order of removal may be sought as in other civil cases.

During the pendency of any appeal, the director of (~~general administration~~) financial institutions shall act as liquidator of the association, without giving any additional bond for the performance of the duties as such liquidator.

If such order of removal shall be affirmed, the director of (~~general administration~~) financial institutions shall name another liquidator for the association, which nominee, upon qualifying as required for receivers generally, shall succeed to the position of liquidator of the association.

Sec. 464. RCW 33.40.130 and 1982 c 3 s 73 are each amended to read as follows:

Savings deposits received by an association, during a period or periods of postponement of payment of withdrawals or of acute business depression, panic or economic emergency under authorization or declaration of the (~~supervisor~~) director as hereinbefore provided, shall be repaid to the depositors paying in such savings before any liquidation dividends shall be declared or paid if, during such period or periods or at the expiration thereof, the (~~supervisor~~) director takes charge of the association for liquidation, as provided in this title.

Sec. 465. RCW 33.40.150 and 1985 c 239 s 2 are each amended to read as follows:

(1) The (~~supervisor of savings and loans~~) director of financial institutions, after exercising the authority granted in RCW 33.16.040, may appoint provisional officers and directors, in whole or in part, of an association.

(2) Notice of the appointment shall be served upon the association, and the appointment shall take effect immediately and shall remain in effect until a successor is chosen in accordance with the association's bylaws.

Sec. 466. RCW 33.43.010 and 1982 c 3 s 74 are each amended to read as follows:

Any domestic association may convert itself into a federal mutual or stock savings and loan association. Any such conversion shall be effected by the vote of a majority in amount of the members present, in person or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the (~~supervisor~~) director at least thirty days prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such conversion be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto.

If conversion be authorized, a copy of the minutes of the meeting shall be filed forthwith with the (~~supervisor~~) director.

Upon consummation of such conversion, the successor federal savings and loan association shall succeed to all right, title, and interest of the domestic

association in and to its assets, and to its liabilities to the creditors and members of the association. Upon such conversion, after the execution and delivery of all instruments of transfer, conveyance and assignment, the domestic association shall be deemed dissolved.

Sec. 467. RCW 33.44.020 and 1982 c 3 s 75 are each amended to read as follows:

Any association organized under the laws of this state, or under the laws of the United States, may, if it has obtained the approval, required by law or regulation, of any federal agencies, including the federal home loan bank board and the federal savings and loan insurance corporation, be converted into a savings bank or commercial bank in the following manner:

(1) The board of directors of such association shall pass a resolution declaring its intention to convert the association into a savings bank or commercial bank and shall apply to the ~~((supervisor of banking))~~ director of financial institutions for leave to submit to the members of the association the question whether the association shall be converted into a savings bank or a commercial bank. A duplicate of the application to the ~~((supervisor of banking))~~ director of financial institutions shall be filed with the ~~((supervisor of savings and loan associations))~~ director of financial institutions, except that no such filing shall be required in the case of an association organized under the laws of the United States. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the association are to be converted into membership or stockholder interests, as the case may be, in the savings bank or commercial bank, and the proposal shall allow for any member or stockholder to withdraw the value of his or her interest at any time within sixty days of the completion of the conversion. The proposal shall be subject to the approval of the ~~((supervisor of banking))~~ director of financial institutions and shall conform to all applicable regulations of the federal home loan bank board, the federal savings and loan insurance corporation, the federal deposit insurance corporation, or other federal regulatory agency.

(2) Thereupon the ~~((supervisor of banking))~~ director of financial institutions shall make the same investigation and determine the same questions as would be required by law to make and determine in case of the submission to the ~~((supervisor of banking))~~ director of financial institutions of a certificate of incorporation of a proposed new savings bank or commercial bank, and the ~~((supervisor of banking))~~ director of financial institutions shall also determine ~~((after conference with the supervisor of savings and loan associations))~~ whether by the proposed conversion the business needs and conveniences of the members of the association would be served with facility and safety, except that no such conference shall be pertinent to such investigation or determination in the case of an association organized under the laws of the United States. After the ~~((supervisor of banking))~~ director of financial institutions determines whether it is expedient and desirable to permit the proposed conversion, the ~~((supervisor of~~

~~banking~~) director of financial institutions shall, within sixty days after the filing of the application, endorse thereon over the official signature of the ~~((supervisor of banking))~~ director of financial institutions the word "granted" or the word "refused", with the date of such endorsement and shall immediately notify the secretary of such association of his or her decision. If an application to convert to a mutual savings bank is granted, the ~~((supervisor of banking))~~ director of financial institutions shall require the applicants to enter into such an agreement or undertaking with the ~~((supervisor of banking))~~ director of financial institutions as trustee for the depositors with the mutual savings bank to make such contributions in cash to the expense fund of the mutual savings bank as in the ~~((supervisor's))~~ director of financial institutions judgment will be necessary then and from time to time thereafter to pay the operating expenses of the mutual savings bank if its earnings should not be sufficient to pay the same in addition to the payment of such dividends as may be declared and credited to depositors from its earnings.

If the application is denied by the ~~((supervisor of banking))~~ director of financial institutions, the association, acting by a two-thirds majority of its board of directors, may, within thirty days after receiving the notice of the denial, appeal to the superior court in the manner prescribed in RCW 34.05.570.

(3) If the application is granted by the ~~((supervisor of banking))~~ director of financial institutions or by the court, as the case may be, the board of directors of the association shall, within sixty days thereafter, submit the question of the proposed conversion to the members of the association at a special meeting called for that purpose. Notice of the meeting shall state the time, place and purpose of the meeting, and that the only question to be voted upon will be, "shall the (naming the association) be converted into a savings bank or commercial bank under the laws of the state of Washington?" The vote on the question shall be by ballot. Any member may vote by proxy or may transmit the member's ballot by mail if the bylaws provide a method for so doing. If two-thirds or more in number of the members voting on the question vote affirmatively, then the board of directors shall have power, and it shall be its duty, to proceed to convert such association into a savings bank or commercial bank; otherwise, the proposed conversion shall be abandoned and shall not be again submitted to the members within three years from the date of the meeting.

(4) If authority for the proposed conversion has been approved by the members as required by this section, the directors shall, within thirty days thereafter, subscribe and acknowledge and file with the ~~((supervisor of banking))~~ director of financial institutions in triplicate a certificate of reincorporation, stating:

(a) The name by which the converted corporation is to be known.

(b) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the corporation has theretofore been located.

(c) The name, occupation, residence and post office address of each signer of the certificate.

(d) The amount of the assets of the corporation, the amount of its liabilities and the amount of its contingent, reserve, expense, and guaranty fund, as applicable, as of the first day of the then calendar month.

(e) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a trustee or director of the bank, and is free from all the disqualifications specified in the laws applicable to savings banks or commercial banks.

(f) Such other items as the (~~supervisor of banking~~) director of financial institutions may require.

(5) Upon the filing of the certificate in triplicate, the (~~supervisor of banking~~) director of financial institutions shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its certificate of incorporation the business of a savings bank or commercial bank. One of the (~~supervisor's~~) director of financial institutions certificates of authorization shall be attached to each of the certificates of reincorporation, and one set of these shall be filed and retained by the (~~supervisor of banking~~) director of financial institutions, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles, the secretary of state shall file the certificates and record the same; whereupon the conversion of the association shall be deemed complete, and the signers of said reincorporation certificate and their successors shall thereupon become and be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to savings banks or commercial banks, as the case may be. The time of existence of the corporation shall be perpetual unless provided otherwise in the articles of incorporation of the association or unless sooner terminated pursuant to law.

Sec. 468. RCW 33.44.090 and 1982 c 3 s 77 are each amended to read as follows:

All mortgages, notes and other securities of any association that has been converted into a savings bank or commercial bank, shall on request of the bank, be delivered to it by the (~~supervisor of savings and loan associations~~) director of financial institutions or under the (~~supervisor's~~) director's direction by any depository having possession thereof. Every such bank shall, as soon as practicable and within such time and by such methods as the (~~supervisor of banking~~) director may direct, cause its organization, its securities and investments, the character of its business and its methods of transacting the same to conform to the laws applicable to savings banks or commercial banks, as applicable.

Sec. 469. RCW 33.44.125 and 1982 c 3 s 78 are each amended to read as follows:

If, in the opinion of the (~~supervisor of savings and loans and the supervisor of banking~~) director of financial institutions, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter to that of a commercial bank or a savings bank so that the association may be acquired by a commercial bank or a savings bank or a bank holding company, then the (~~supervisor of savings and loans and the supervisor of banking~~) director may waive any such requirement.

Sec. 470. RCW 33.44.130 and 1982 c 3 s 79 are each amended to read as follows:

The (~~supervisor of savings and loan associations and the supervisor of banking~~) director of financial institutions shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors.

Sec. 471. RCW 33.46.020 and 1982 c 3 s 81 are each amended to read as follows:

Any bank may be converted into an association in the following manner:

(1) The trustees or directors of the bank shall pass, by at least a two-thirds favorable vote of all trustees or directors, a resolution declaring its intention to convert the bank into an association, specifying in such resolution the type of association and whether the association is to be organized under the laws of this state, or is to be organized under the laws of the United States of America. If the association is to be a state association the bank shall apply to the (~~supervisor of savings and loan associations~~) director of financial institutions for authority to convert into an association. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the bank are to be converted into membership or shareholder interest, as the case may be, in the association, and the proposal shall allow for any member or stockholder to withdraw the value of his or her interest at any time within sixty days of the completion of the conversion. The proposal is subject to the approval of the (~~supervisor of savings and loans~~) director of financial institutions and shall conform to all applicable regulations of the federal deposit insurance corporation, the federal home loan bank board, the federal savings and loan insurance corporation, or other federal regulatory agency.

(2) (~~A duplicate of the application made to the supervisor of savings and loan associations, or such application as may be filed with the federal home loan bank board or other federal agency, shall be filed with the supervisor of banking.~~

(3)) The (~~supervisor of savings and loan associations~~) director of financial institutions shall, in the case of an application to convert into a state association, make the same investigation and determine the same questions as he or she

would be required by law to make in determining the case of submission to him or her of articles of incorporation of a proposed new state association, and shall also determine (~~(, after conference with the supervisor of banking,)~~) whether the proposed conversion would serve the needs and conveniences of the depositors of the bank.

(4) The (~~(supervisor of savings and loan associations)~~) director of financial institutions shall grant or deny the application within sixty days of its date of filing and shall immediately notify the secretary of the bank of the decision.

Sec. 472. RCW 33.46.030 and 1982 c 3 s 82 are each amended to read as follows:

If the application to become a domestic mutual association is granted, the (~~(supervisor of savings and loan associations)~~) director of financial institutions shall require the applicant to enter into an agreement or undertaking with the (~~(supervisor)~~) director, as trustee for the members of the association, to make such cash contributions to an expense fund of the mutual association as in the (~~(supervisor's)~~) director's judgment will be necessary then and from time to time thereafter to pay the operating expenses of the association if its earnings should not be sufficient to pay the same in addition to the payment of such dividends as may be declared and credited to members from its earnings.

Sec. 473. RCW 33.46.040 and 1982 c 3 s 83 are each amended to read as follows:

If the application is denied by the (~~(supervisor of savings and loan associations)~~) director of financial institutions, the bank, acting by a two-thirds majority of its trustees or directors, may, within thirty days after receiving notice of such denial, appeal to the superior court of Thurston county pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 474. RCW 33.46.050 and 1982 c 3 s 84 are each amended to read as follows:

If the application is granted by the (~~(supervisor of savings and loan associations)~~) director of financial institutions, or by the court, the trustees or directors of the bank shall, within thirty days thereafter, subscribe, acknowledge, and file with the (~~(supervisor of savings and loan associations)~~) director of financial institutions, in triplicate, a certificate of reincorporation stating:

- (1) The name by which the association is to be known;
- (2) The place where the association is to be located and its business transacted, naming the city or town and the county, which city or town shall be the same as that where the principal place of business of the bank has theretofore been located;
- (3) The name, occupation, residence, and post office address of each signer of the certificate;
- (4) The amount of the assets of the association, the amount of its liabilities, and the amount of its contingent, expense, or guaranty fund, as applicable, as of the first day of the calendar month during which the certificate is filed; and

(5) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the association, and is free from all the disqualifications specified in the laws applicable to savings and loan associations.

Sec. 475. RCW 33.46.060 and 1982 c 3 s 85 are each amended to read as follows:

Upon filing the certificate in triplicate as provided in RCW 33.46.050, the (~~supervisor of savings and loan associations~~) director of financial institutions shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the association has complied with all of the requirements of law, and that it has authority to transact, at the place or places designated in its certificate, the business of an association. The (~~supervisor of savings and loan associations~~) director of financial institutions shall retain one set of the triplicate originals of the certificate of reincorporation and of the certificate of authorization and shall transmit the other two sets to the association, which shall retain one set, and file one set with the secretary of state, paying the required fees. Upon such filings being made, the conversion of the bank to the association shall be deemed complete and consummated, and the association shall thereupon be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to state associations, and the time of existence of such association shall be perpetual, unless sooner terminated.

Sec. 476. RCW 33.46.080 and 1982 c 3 s 87 are each amended to read as follows:

All mortgages, notes, and other securities of any bank that has been converted into an association shall, on request of the association, be delivered to it by the (~~supervisor of banking~~) director of financial institutions or, under the direction of the (~~supervisor of banking~~) director, by any depository having possession thereof. If the association is a state association it shall, as soon as practicable and within such time and by such methods as the (~~supervisor of savings and loan associations~~) director may direct, cause its organization, its securities and investments, the character of its business, and its methods of transacting the same to conform to the laws applicable to state associations.

Sec. 477. RCW 33.46.130 and 1982 c 3 s 90 are each amended to read as follows:

The (~~supervisor of savings and loan associations and the supervisor of banking~~) director of financial institutions shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors.

Sec. 478. RCW 33.48.100 and 1982 c 3 s 96 are each amended to read as follows:

A domestic stock association may convert to a domestic mutual association under the provisions of applicable statutes and regulations of proper federal and state supervisory authorities. In the event of compliance with such statutes and regulations an appraisal of the stock shall be made by the ~~((supervisor))~~ director, upon written request of the directors of the association, and the appropriate value of the stock may be given consideration in the proceedings to convert by giving credit to such stock from surplus and other reserves.

Sec. 479. RCW 33.48.110 and 1982 c 3 s 97 are each amended to read as follows:

Any mutual association, either domestic or federal, operating in the state of Washington may convert itself into a domestic stock association. The conversion shall be effected by the vote of two-thirds of the members present and voting in person or by proxy at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given to the ~~((supervisor))~~ director and to each member by mailing notice to the member's last known address at least thirty days prior to the meeting.

At the meeting, the members may adopt a resolution amending its articles of incorporation and bylaws to provide for operation under this chapter as a stock association.

Upon adoption of the resolution, members shall be given notice of the proposed change and shall be offered, for a period of sixty days following the date of the meeting, the right to subscribe for the proposed stock, pro rata to their deposits in such mutual association, and such right shall be transferable. In the event that the total stock required has not, at the end of the sixty day period, been fully subscribed, the unsubscribed portion shall be offered to any former subscribers for such stock.

When the stock has been fully subscribed and paid for, certified copies of the documents relating to the conversion shall be submitted to the ~~((supervisor))~~ director for his or her approval of the conversion proceedings. Upon notification by the ~~((supervisor))~~ director that the ~~((supervisor))~~ director approves the conversion, the directors shall adopt a resolution declaring the association to be a stock association and thereafter it shall be such.

The ~~((supervisor))~~ director shall adopt such rules under chapter 34.05 RCW, the administrative procedure act, as are necessary to implement this section in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors.

Sec. 480. RCW 33.48.130 and 1955 c 122 s 14 are each amended to read as follows:

The directors of an association which has voted to amend its charter or convert to another type of institution, may withdraw the application at any time prior to the issuance of the amended charter, by adopting a proper resolution and forwarding a copy to the ~~((supervisor))~~ director.

Sec. 481. RCW 33.48.150 and 1973 c 130 s 6 are each amended to read as follows:

No subscriptions or funds from proposed stockholders of any proposed association, prior to its incorporation and prior to a decision by the ~~((supervisor))~~ director on its application for approval of its articles of incorporation, may be solicited or taken until a verified application for an organizing permit has been filed and a permit has been issued by the ~~((supervisor))~~ director authorizing such subscription or collection of funds and then, only in accordance with the terms of such permit.

Sec. 482. RCW 33.48.160 and 1973 c 130 s 7 are each amended to read as follows:

The application for an organizing permit under RCW 33.48.150 shall be in writing, verified as provided by law for the verification of pleadings and shall be filed in the office of the ~~((supervisor))~~ director. Such application shall be signed by the proposed incorporators and shall include the following:

(1) The names and addresses of its proposed directors, officers and incorporators, to the extent known;

(2) The proposed location of its office;

(3) A copy of any contract proposed to be used for the solicitation of stock subscriptions and funds for its preincorporation expenses;

(4) A copy of any advertisement, circular, or other written matter proposed to be used for soliciting stock subscriptions and funds for its preincorporation expenses;

(5) A statement of the total funds proposed to be solicited and collected prior to incorporation and an itemized estimate of the preincorporation expenses proposed to be paid;

(6) A list of the names and addresses and amounts of each of the known proposed stockholders and contributors to the fund for preincorporation expenses; and

(7) Such additional information as the ~~((supervisor))~~ director may require.

Sec. 483. RCW 33.48.170 and 1982 c 3 s 100 are each amended to read as follows:

The ~~((supervisor))~~ director may impose conditions in the ~~((supervisor's))~~ director's organizing permit issued under RCW 33.48.150 concerning the deposit in escrow of funds collected pursuant to said permit, the manner of expenditure of such funds and such other conditions as he or she deems reasonable and necessary or advisable for the protection of the public and the subscribers to such stock or funds for preincorporation expenses.

Sec. 484. RCW 33.48.180 and 1982 c 3 s 101 are each amended to read as follows:

No association shall sell, take subscriptions for, or issue any stock until the association applies for and secures from the ~~((supervisor))~~ director a permit authorizing it to sell stock.

This section does not apply to an offering involving less than five hundred thousand dollars nor to an offering made under a registration statement filed under the federal securities act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a).

Sec. 485. RCW 33.48.190 and 1973 c 130 s 9 are each amended to read as follows:

No issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for such sales until the association or the selling stockholders have applied for and secured from the (~~supervisor~~) director a permit authorizing the sale of the guaranty stock.

This section shall not apply to an offering involving less than ten percent of the issued and outstanding guaranty stock of an association and less than five hundred thousand dollars nor to an offering made under a registration statement filed under the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a).

Sec. 486. RCW 33.48.200 and 1982 c 3 s 102 are each amended to read as follows:

An application for a permit to sell stock shall be in writing and shall be filed in the office of the (~~supervisor~~) director by the association.

The application shall include the following:

(1) Regarding the association:

(a) The names and addresses of its officers;

(b) The location of its office;

(c) An itemized account of its financial condition within ninety days of the filing date; and

(d) A copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock;

(2) Regarding the offering:

(a) The names and addresses of the selling stockholders and of the officers of any selling corporation and the partners of any selling partnership;

(b) A copy of any contract concerning the sale of the stock;

(c) A copy of a prospectus or advertisement or other description of the stock prepared for distribution or publication in accordance with requirements prescribed by the (~~supervisor~~) director;

(d) A brief description of the method by which the stock is to be offered for sale including the offering price and the underwriting commissions and expense, if any; and

(3) Such additional information as the (~~supervisor~~) director may require.

Sec. 487. RCW 33.48.210 and 1982 c 3 s 103 are each amended to read as follows:

Upon the filing of the application for a permit to sell stock, the (~~supervisor~~) director shall examine the application and other papers and documents filed therewith and he or she may make a detailed examination, audit, and investigation of the association and its affairs. If the (~~supervisor~~) director finds that the

proposed plan for the issue and sale of such stock is fair, just and equitable, the ~~((supervisor))~~ director shall issue to the applicant a permit authorizing it to issue and dispose of its stock in such amounts and for such considerations and upon such terms and conditions as the ~~((supervisor))~~ director may provide in the permit. If the ~~((supervisor))~~ director does not so find he or she shall deny the application and notify the applicant in writing of his or her decision.

Sec. 488. RCW 33.48.230 and 1982 c 3 s 105 are each amended to read as follows:

With respect to sales of stock by an association, the ~~((supervisor))~~ director may impose conditions requiring the impoundment of the proceeds from the sale of stock, limiting the expense in connection with the sale of such stock, and other conditions as he or she deems reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in the permit.

Sec. 489. RCW 33.48.240 and 1982 c 3 s 106 are each amended to read as follows:

The ~~((supervisor))~~ director may amend, alter, suspend, or revoke any permit issued under RCW 33.48.150 if there is a violation of the terms and conditions of the permit or if the ~~((supervisor))~~ director determines that the subscription or proposed issue and sale is no longer fair, just, and equitable.

Sec. 490. RCW 33.48.250 and 1985 c 239 s 3 are each amended to read as follows:

An association may purchase stock issued by it in an amount not to exceed the amount of earned surplus or undivided profits available for dividends on its stock if: The stock so purchased is included for federal estate tax purposes in determining the gross estate of a decedent, and the amount paid for such purchase is entitled to be treated under section 303 of the Internal Revenue Code of 1954 (68A Stat. 3; 26 U.S.C. Sec. 1), or other applicable federal statute or the corresponding provision of any future federal revenue law, as a distribution in full payment in exchange for the stock so purchased, or such purchase is with the prior consent of the ~~((supervisor))~~ director, or such purchase is pursuant to a put option contained in a plan which has been approved by the ~~((supervisor))~~ director establishing an employee stock ownership plan for the association and its employees pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended, or Section 409 of the Internal Revenue Code of 1954, as now constituted or hereafter amended. Stock so purchased until sold shall be carried as treasury stock. Upon the purchase of any stock issued by the association, an amount equal to the purchase price shall be set aside from earned surplus or undivided profits available for dividends to a specific reserve account established for this purpose. Upon sale of any of such stock, the amount relating thereto in the specific reserve account shall be returned to the surplus or undivided profits account (as the case may be) and shall be available for dividends. Reacquired

stock shall not be resold at less than its reacquisition cost, without the specific approval of the ((supervisor)) director, and shall not be resold or reissued except in accordance with RCW 33.48.220 through 33.48.240.

Sec. 491. RCW 33.48.260 and 1982 c 3 s 108 are each amended to read as follows:

With the prior consent of the ((supervisor)) director, the stock of an association may be reduced by resolution of the board of directors approved by the vote or written consent of the holders of a majority in amount of the outstanding stock of the association to such amount as the ((supervisor)) director approves.

Sec. 492. RCW 33.48.280 and 1982 c 3 s 110 are each amended to read as follows:

An association may, by action of its board of directors and with the prior approval of the ((supervisor)) director, apply any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock to the reduction or writing off of any deficit arising from losses or diminution in value of its assets, or may transfer to or designate as a part of its federal insurance account or any other reserve account irrevocably established for the sole purpose of absorbing losses, any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock.

Sec. 493. RCW 33.48.320 and 1982 c 3 s 112 are each amended to read as follows:

If, in the opinion of the ((supervisor)) director, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter from a mutual association to a stock association or from a stock association to a mutual association so that the association may be acquired by an association or a savings and loan holding company, then the ((supervisor)) director may waive any such requirement.

Sec. 494. RCW 39.58.010 and 1984 c 177 s 10 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Public funds" means moneys under the control of a treasurer or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee;

(2) "Qualified public depository," "public depository," or "depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability. Addition of the word "bank" denotes a bank, trust company, or national banking association and the word "thrift" denotes a savings and loan association, mutual savings bank, or stock savings bank;

(3) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a qualified public depository from making payments of deposit liabilities or (b) appointing a receiver for a qualified public depository;

(4) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(5) "Eligible collateral" means securities which are enumerated in RCW 39.58.050(5) and (6) as eligible collateral for public deposits;

(6) The "maximum liability" of a qualified public depository on any given date means a sum equal to ten percent of (a) all public deposits held by the qualified public depository on the then most recent commission report date, or (b) the average of the balances of said public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater, less any assessments paid to the commission pursuant to this chapter since the then most recent commission report date;

(7) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(8) "Investment deposits" means time deposits and savings deposits of public funds available for investment;

(9) "Treasurer" shall mean the state treasurer, a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and the custodian of any other public funds;

(10) "Financial institution" means a branch of a bank engaged in banking in this state in accordance with RCW 30.04.300, and any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association located in this state and lawfully engaged in business;

(11) "Commission report" means a formal accounting rendered by all qualified public depositories to the commission in response to a demand for specific information made upon all depositories by the commission detailing pertinent affairs of each depository as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(12) (~~"Supervisor" means either the supervisor of banks or the supervisor of savings and loan associations or both depending upon context and usage in accordance with applicable statutory authority~~) "Director" means the director of financial institutions;

(13) "Net worth" of a depository means (a) for a bank depository, the aggregate of capital, surplus, undivided profits and all capital notes and debentures which are subordinate to the interest of depositors, and (b) for a thrift depository, the aggregate of such capital stock, guaranty fund, general reserves, surplus, undivided profits, and capital notes and debentures which are subordinate to the interest of depositors, as are eligible for inclusion in otherwise determining

the net worth of a mutual savings bank, stock savings bank, or savings and loan association.

Sec. 495. RCW 43.19.015 and 1984 c 29 s 2 are each amended to read as follows:

The director of (~~general administration~~) financial institutions shall have the power and duties of the director of public institutions contained in the following chapters of RCW: Chapter 33.04 RCW concerning savings and loan associations; and chapter 39.32 RCW concerning purchase of federal property.

Sec. 496. RCW 43.24.020 and 1989 1st ex.s. c 9 s 314 are each amended to read as follows:

The director of licensing shall administer all laws with respect to the examination of applicants for, and the issuance of, licenses to persons to engage in any business, profession, trade, occupation, or activity except for health professions.

~~((This shall include the administration of all laws pertaining to the regulation of securities and speculative investments.))~~

Sec. 497. RCW 43.24.024 and 1979 c 158 s 96 are each amended to read as follows:

The director of licensing may delegate to the assistant director of the business and professions administration in the department of licensing authority to promulgate rules and regulations relating to the licensing of persons engaged in businesses and professions (~~and to the administration of laws pertaining to the regulation of securities~~). The director may delegate the authority to issue and sign licenses, certificates, permits and renewals thereof pertaining to those activities transferred to the business and professions administration in the department of licensing pursuant to RCW 46.01.050.

Sec. 498. RCW 43.163.010 and 1989 c 279 s 2 are each amended to read as follows:

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 RCW 43.163.020 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~~) director of financial institutions, 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 RCW 43.163.090.

Sec. 499. RCW 43.163.110 and 1989 c 279 s 12 are each amended to read as follows:

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~~) director of financial

institutions, 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.

Sec. 500. RCW 46.01.011 and 1979 c 158 s 113 are each amended to read as follows:

The legislature finds that the department of licensing administers laws relating to the licensing and regulation of professions, businesses, ~~((securities,))~~ gambling, and other activities in addition to administering laws relating to the licensing and regulation of vehicles and vehicle operators, dealers, and manufacturers. The laws administered by the department have the common denominator of licensing and regulation and are directed toward protecting and enhancing the well-being of the residents of the state.

Sec. 501. RCW 46.01.050 and 1979 c 158 s 116 are each amended to read as follows:

All powers, functions and duties vested by law in the division of professional licensing in the department of licensing on August 9, 1969, other than those enumerated in RCW 46.01.040, shall be transferred to the business and professions administration hereby created consisting of the divisions of ~~((securities,))~~ real estate~~(-)~~ and professional licensing, within the department of licensing.

Sec. 502. RCW 48.18A.060 and 1973 1st ex.s. c 163 s 7 are each amended to read as follows:

No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the ~~((administra-
tor of securities))~~ director of financial institutions pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state.

Sec. 503. RCW 48.18A.070 and 1969 c 104 s 7 are each amended to read as follows:

Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable

contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesman's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter he or she may independently, and in concert with the ~~((state securities administrator))~~ director of financial institutions, issue such reasonable rules and regulations as may be appropriate.

Sec. 504. RCW 58.19.030 and 1979 c 158 s 209 are each amended to read as follows:

(1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his or her own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter ~~((as provided in RCW 58.19.040))~~;

(d) Offers or dispositions of securities currently registered with the ~~((business and professions administration in the))~~ department of ~~((licensing))~~ financial institutions;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the ~~((business and professions administration in the))~~ department of ~~((licensing))~~ financial institutions.

Sec. 505. RCW 70.37.020 and 1989 c 65 s 1 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))~~ financial institutions 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 February 4, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 93

[House Bill 2481]

USE TAX—TANGIBLE PERSONAL PROPERTY TEMPORARILY USED IN
STATE—TANGIBLE PERSONAL PROPERTY MANUFACTURED OUTSIDE STATE

AN ACT Relating to use tax on tangible personal property temporarily used in this state by a person engaged in business outside this state, and property purchased, extracted, produced, or manufactured outside this state; amending RCW 82.12.020; reenacting and amending RCW 82.12.010; and providing an effective date.

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

Sec. 1. RCW 82.12.010 and 1985 c 222 s 1 and 1985 c 132 s 1 are each reenacted and amended to read as follows:

For the purposes of this chapter:

(1)(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules (~~and regulations~~) as the department of revenue may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules (~~and regulations~~) as the department of revenue may prescribe(~~(+ PROVIDED, That)~~). In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules (~~and regulations~~) as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ~~((ninety))~~ one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in ~~((the first paragraph))~~ (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: ~~((a))~~ (i) The retail selling price of such new or improved product when first offered for sale; or ~~((b))~~ (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale~~((:))~~;

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

(3) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(4) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(5) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services.

Sec. 2. RCW 82.12.020 and 1983 c 7 s 7 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the

person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280(~~(,subsections)~~) (2) or (7). (~~This tax will not apply with respect to the use of any article of tangible personal property purchased, extracted, produced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property in this state.~~)

(2) This tax shall apply to the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020(~~, as now or hereafter amended, in the county in which the article is used~~).

NEW SECTION. Sec. 3. This act shall take effect July 1, 1994.

Passed the House February 14, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 94

[Substitute House Bill 2526]

CHIROPRACTIC CARE—WORKERS' COMPENSATION

AN ACT Relating to chiropractic care for industrial insurance; and adding a new section to chapter 51.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 51.36 RCW to read as follows:

Subject to the other provisions of this title, the health services that are available to an injured worker under RCW 51.36.010 include chiropractic care and evaluation. For the purposes of assisting the department in making claims determinations, an injured worker may be required by the department to undergo examination by a chiropractor licensed under chapter 18.25 RCW.

Passed the House February 12, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 95

[Substitute House Bill 2582]

LEASEHOLD EXCISE TAXES

AN ACT Relating to leasehold excise taxes; amending RCW 82.29A.060 and 82.29A.120; and declaring an emergency.

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

Sec. 1. RCW 82.29A.060 and 1975-'76 2nd ex.s. c 61 s 6 are each amended to read as follows:

(1) All administrative provisions in chapters 82.02 and 82.32 RCW(~~as now or hereafter amended~~) shall be applicable to taxes imposed pursuant to this chapter(~~as PROVIDED, That~~).

(2) A lessee, or a sublessee in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the county board of equalization for a change in appraised value when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b) based on an appraisal done by the county assessor at the request of the department. The petition must be on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board within the time period set forth in RCW 84.40.038. A decision of the board of equalization may be appealed by the taxpayer to the board of tax appeals as provided in RCW 84.08.130.

A sublessee, in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the department for a change in taxable rent when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b).

Any change in tax resulting from an appeal under this subsection shall be allocated to the lessee or sublessee responsible for paying the tax.

(3) This section shall not authorize the issuance of any levy upon any property owned by the public lessor.

(4) In selecting leasehold excise tax returns for audit the department of revenue shall give priority to any return an audit of which is specifically requested in writing by the county assessor or treasurer or other chief financial officer of any city or county affected by such return. Notwithstanding the provisions of RCW 82.32.330, findings of fact and determinations of the amount of taxable rent made pursuant to the provisions of this chapter shall be open to public inspection at all reasonable times.

Sec. 2. RCW 82.29A.120 and 1986 c 285 s 2 are each amended to read as follows:

After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040 there shall be allowed the following credits in determining the tax payable:

(1) With respect to a leasehold interest other than a product lease, executed with an effective date of April 1, 1986, or thereafter, or a leasehold interest in

respect to which the department of revenue under the authority of RCW 82.29A.020 does adjust the contract rent base used for computing the tax provided for in RCW 82.29A.030, there shall be allowed a credit against the tax as otherwise computed equal to the amount, if any, that such tax exceeds the property tax that would apply to such leased property without regard to any property tax exemption under RCW 84.36.381, if it were privately owned by the lessee or if it were privately owned by any sublessee if the value of the credit inures to the sublessee. For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit shall be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381.

(2) With respect to a product lease, a credit of thirty-three percent of the tax otherwise due.

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

Passed the House February 12, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 96

[House Bill 2601]

911 EXCISE TAX—LOCAL AUTHORITY TO IMPOSE ON RADIO ACCESS LINES

AN ACT Relating to the implementation of the cellular communications tax study recommendations regarding 911 emergency communication system funding; amending RCW 82.14B.020, 82.14B.030, 82.14B.040, and 38.52.540; adding a new section to chapter 38.52 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications

in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the study of such funding as detailed in the report.

Sec. 2. RCW 82.14B.020 and 1991 c 54 s 10 are each amended to read as follows:

As used in this chapter:

(1) "Emergency services communication system" means a multicounty, county-wide, or district-wide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by an end user for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signalling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

Sec. 3. RCW 82.14B.030 and 1991 c 54 s 11 are each amended to read as follows:

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be

uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county 911 excise tax on the use of radio access lines located within the county in an amount not exceeding twenty-five cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the users who paid the tax. The ordinance shall further provide that to the extent the users who paid the tax cannot be identified or located, the tax paid by those users shall be returned to the county.

(3) Beginning January 1, 1992, a state enhanced 911 excise tax is imposed on all switched access lines in the state. For 1992, the tax shall be set at a rate of twenty cents per month for each switched access line. Until December 31, 1998, the amount of tax shall not exceed twenty cents per month for each switched access line and thereafter shall not exceed ten cents per month for each switched access line. The tax shall be uniform for each switched access line. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

~~((3))~~ (4) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year.

Sec. 4. RCW 82.14B.040 and 1991 c 54 s 12 are each amended to read as follows:

The state enhanced 911 tax and the county enhanced 911 tax ~~((created in this chapter))~~ on switched access lines shall be collected from the user by the local exchange company providing the switched access line. The ~~((local exchange company shall state))~~ county 911 tax on radio access lines shall be collected from the end user by the radio communications service company providing the radio access line to the end user. The amount of the ~~((taxes))~~ tax shall be stated separately on the billing statement which is sent to the user.

NEW SECTION. **Sec. 5.** A new section is added to chapter 38.52 RCW to read as follows:

Any person as defined in RCW 82.04.030 owning, operating, or managing any facilities used to provide wireless two-way telecommunications services for hire, sale, or resale which allow access to 911 emergency services shall provide

a system of automatic number identification which allows the 911 operator to automatically identify the number of the caller.

NEW SECTION. Sec. 6. (1) The department of revenue shall conduct a study of base and rate for the 911 excise tax. The study shall address but not be limited to the following questions:

(a) What is the current tax base for enhanced 911 excise tax? Who is included in the current tax base? Who is not included in the current tax base?

(b) What have been and what are projected to be the 911 tax revenues, expenditures, and funding sources?

(c) How are 911 systems funded in other states?

(d) What would be an appropriate tax base and tax rate for a 911 tax?

(e) What are the fiscal impacts of changing the tax base or tax rate, or both?

(f) Does the proposed tax base cover all current and projected future technologies?

(2) To perform this study, the department of revenue shall form an advisory study committee with balanced representation which must include, but need not be limited to, representatives from county government, representatives of both wireline and wireless telecommunications companies, large and small businesses that use wireline and wireless telecommunications services, the department of community, trade, and economic development, and county 911 coordinators. The committee shall also include two members from the house of representatives, one from each caucus, appointed by the speaker of the house of representatives, and two members from the senate, one from each caucus, appointed by the president of the senate.

(3) The department of revenue shall provide staff for the purpose of the study.

(4) The department of revenue shall present a final report of the findings of the study to the committees of the legislature that deal with revenue matters no later than July 1, 1995.

Sec. 7. RCW 38.52.540 and 1991 c 54 s 6 are each amended to read as follows:

The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise tax imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to help implement and operate enhanced 911 state-wide, and to conduct a study of the tax base and rate for the 911 excise tax. The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall specify by rule the purposes for which moneys may be expended from this account.

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, except section 5 of this act shall take effect January 1, 1995.

Passed the House February 14, 1994.
 Passed the Senate March 7, 1994.
 Approved by the Governor March 23, 1994.
 Filed in Office of Secretary of State March 23, 1994.

CHAPTER 97

[Substitute House Bill 2614]

WORKERS' COMPENSATION—SELF-INSURERS' PERMANENT DISABILITY DETERMINATION

AN ACT Relating to self-insured employers; and amending RCW 51.32.055.

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

Sec. 1. RCW 51.32.055 and 1988 c 161 s 13 are each amended to read as follows:

(1) One purpose of this title is to restore the injured worker as ~~((near))~~ nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department. Either the worker, employer, or self-insurer may make a request or ~~((such))~~ the inquiry may be initiated by the director on his or her own motion. ~~((Such))~~ Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or self-insurer shall be forwarded to the director with ~~((such))~~ the request~~((s))~~.

(3) A request for determination of permanent disability shall be examined by the department and an order shall issue in accordance with RCW 51.52.050.

(4) The department may require that the worker present himself or herself for a special medical examination by a physician~~((r))~~ or physicians~~((r))~~ selected by the department, and the department may require that the worker present himself or herself for a personal interview. ~~((In such event))~~ The costs of ~~((such))~~ the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of ~~((such))~~ the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim~~((s prior to))~~ before the condition of the injured worker ~~((becoming))~~ becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In

~~((such))~~ these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) ~~((In the case of))~~ If a claim~~((s))~~ (i) is accepted by a self-insurer~~((s))~~ after June 30, 1986, ~~((and before July 1, 1990, which))~~ (ii) involves only medical treatment and ~~((of))~~ the payment of temporary disability compensation under RCW 51.32.090 ~~((and which))~~ or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded ~~((do))~~ does not involve permanent disability, ~~((if the claim))~~ (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record~~((, such))~~ at the worker's previous job or at a job that has comparable wages and benefits, the claim~~((s))~~ may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted by self-insurers after June 30, 1986, ~~((and before July 1, 1990,))~~ shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim~~((s))~~ under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you may protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order." ~~((In the event))~~ If the department receives such a protest, the self-insurer's closure order shall be held in abeyance. The department shall review the claim closure action and enter a determinative order as provided for in RCW 51.52.050.

(d) If within two years of claim closure the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation~~((r))~~ or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This paragraph ~~((shall))~~ does not limit in any way the application of RCW 51.32.240.

(8) ~~((In the case of))~~ If a claim~~((s))~~ (a) is accepted by a self-insurer~~((s))~~ after June 30, 1990, ~~((which))~~ (b) involves only medical treatment ~~((and which do))~~, (c) does not involve payment of temporary disability compensation under RCW 51.32.090, and ~~((which))~~ (d) at the time medical treatment is concluded ~~((do))~~ does not involve permanent disability, ~~((such))~~ the claim~~((s))~~ may be closed by the self-insurer~~((s))~~, subject to reporting of claims to the department in a manner

prescribed by department rules (~~(promulgated pursuant to)~~) adopted under chapter 34.05 RCW. Upon (~~such~~) closure of a claim, the self-insurer(s) shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you may protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order." (~~In the event~~) If the department receives such a protest, it shall review the claim and enter a further determinative order as provided for in RCW 51.52.050.

Passed the House February 12, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 98

[House Bill 2814]

PUBLIC PURCHASE AGREEMENTS WITH PUBLIC BENEFIT NONPROFIT CORPORATIONS

AN ACT Relating to nonprofit corporations purchasing through state contracts; and adding a new section to chapter 39.34 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 39.34 RCW to read as follows:

The office of state procurement within the department of general administration may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the office of state procurement. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state.

Passed the House February 11, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.

CHAPTER 99

[Substitute House Bill 1561]

PRESCHOOLS—REGULATION PHASE-IN STRATEGY

AN ACT Relating to preschools; and creating a new section.

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

NEW SECTION. **Sec. 1.** The safety, health, welfare, and quality of care and early education is critically important to the well-being of young children. Educational programs that enroll preschool children for four or fewer hours per day are exempted from requirements of chapter 74.15 RCW. Therefore, the legislature intends to bring such programs under state regulatory authority consistent with other child care and early childhood programs by 1998.

The child care coordinating committee established under RCW 74.13.090 shall develop a phase-in strategy with specific recommendations and impact statements and report these recommendations and findings to the legislature by December 1, 1994. In developing these recommendations, the child care coordinating committee shall involve programs serving preschool children.

Passed the House February 10, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 25, 1994.

Filed in Office of Secretary of State March 25, 1994.

CHAPTER 100

[Substitute House Bill 2414]

CHILD PASSENGER RESTRAINT SYSTEMS—AGE THRESHOLDS—CERTAIN VEHICLES EXEMPTED

AN ACT Relating to child passenger restraint systems; and amending RCW 46.61.687.

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

Sec. 1. RCW 46.61.687 and 1993 c 274 s 1 are each amended to read as follows:

(1) Whenever a child who is less than (~~(six)~~) ten years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, the driver of the vehicle shall keep the child properly restrained as follows:

(a) If the child is less than (~~(two)~~) three years of age, the child shall be properly restrained in a child restraint system that complies with standards of the United States department of transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

(b) If the child is less than (~~(six)~~) ten but at least (~~(two)~~) three years of age, the child shall be restrained either as specified in (a) of this subsection or with a safety belt properly adjusted and fastened around the child's body.

(2) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system within seven days to the jurisdiction issuing the notice, the jurisdiction shall dismiss the notice of traffic infraction. ~~((If the person fails to present proof of acquisition within the time required, he or she is subject to a penalty assessment of not less than thirty dollars.))~~

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action.

(4) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, and (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals.

Passed the House February 12, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 25, 1994.

Filed in Office of Secretary of State March 25, 1994.

CHAPTER 101

[Engrossed House Bill 2702]

PUBLIC WORKS—BONDING COMPANY STANDARDS

AN ACT Relating to bonds for retainage on public works; and amending RCW 60.28.011.

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

Sec. 1. RCW 60.28.011 and 1992 c 223 s 2 are each amended to read as follows:

(1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract ~~((~~PROVIDED, That~~)).~~ However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts

retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) (~~With the consent of the public body the~~) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW(~~PROVIDED, That~~). However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services.

Passed the House February 12, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 25, 1994.

Filed in Office of Secretary of State March 25, 1994.

CHAPTER 102

[Substitute House Bill 2380]

MALPRACTICE COVERAGE FOR HEALTH CARE PRACTITIONERS

AN ACT relating to mandated malpractice coverage for health care practitioners; and amending RCW 18.130.330 and 48.22.080.

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

Sec. 1. RCW 18.130.330 and 1993 c 492 s 412 are each amended to read as follows:

(1) Except to the extent that liability insurance is not available, every licensed, certified, or registered health care practitioner whose services are included in the uniform benefits package, as determined by RCW 43.72.130, and whose scope of practice includes independent practice, shall, as a condition of licensure and relicensure, be required to provide evidence of a minimum level of malpractice insurance coverage ((issued by a company authorized to do business in this state. On or)) of a type satisfactory to the department before ((January 1, 1994,)) July 1, 1995.

The department shall designate by rule:

((1)) (a) Those health professions whose scope of practice includes independent practice;

((2)) (b) For each health profession whose scope of practice includes independent practice, whether malpractice insurance is available; ((and

((3)) (c) If such insurance is available, the appropriate minimum level of mandated coverage; and

(d) The types of malpractice insurance coverage that will satisfy the requirements of this section.

(2) By December 1, 1994, the department of health shall submit recommendations to appropriate committees of the legislature regarding implementation of this section. The report shall address at least the following issues:

(a) Whether exemption of a health care practitioner from the requirements of this section, including but not limited to health care practitioners employed by the federal government and retired health care practitioners, is appropriate; and

(b) Whether malpractice coverage provided by an employer should be recognized as satisfying the requirements of this section.

Sec. 2. RCW 48.22.080 and 1993 c 492 s 413 are each amended to read as follows:

Effective July 1, 1994, a casualty insurer's issuance of a new medical malpractice policy or renewal of an existing medical malpractice policy to a physician or other independent health care practitioner shall be conditioned upon that practitioner's participation in, and completion of, an insurer-designed health care liability risk management training program once every three years. Completion of said training program during 1994 shall satisfy the first three-year training requirement. The risk management training shall provide information related to avoiding adverse health outcomes resulting from substandard practice and minimizing damages associated with the adverse health outcomes that do occur. For purposes of this section, "independent health care practitioners" means those health care practitioner licensing classifications designated by the department of health in rule pursuant to RCW 18.130.330.

Passed the House March 8, 1994.

Passed the Senate March 7, 1994.

Approved by the Governor March 25, 1994.

Filed in Office of Secretary of State March 25, 1994.

CHAPTER 103

[House Bill 2508]

HEALTH CARE PROFESSIONAL TEMPORARY SUBSTITUTE POOL

AN ACT Relating to health care professional temporary substitute resource pool; and amending RCW 70.180.020, 70.180.030, and 70.180.040.

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

Sec. 1. RCW 70.180.020 and 1990 c 271 s 2 are each amended to read as follows:

The department shall establish ~~((the))~~ or contract for a health professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

- (1) Are unavailable due to provider shortages;
- (2) Need time off from practice to attend continuing education and other training programs; and
- (3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by rural communities where shortages exist.

Sec. 2. RCW 70.180.030 and 1990 c 271 s 3 are each amended to read as follows:

- (1) The department, in cooperation with ~~((the))~~ the University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and

associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term basis in rural communities of the state. The department shall ~~((periodically screen individuals on the registry for violations of the uniform disciplinary act as authorized in chapter 18.130 RCW. If a finding of unprofessional conduct has been made by the appropriate disciplinary authority against any individual on the registry, the name of that individual shall be removed from the registry and that person shall be made ineligible for the program. The department shall include a list of back up physicians and hospitals who can provide support to health care providers in the pool))~~ list only individuals who have a valid license to practice. The register shall be compiled~~((, published,))~~ and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations. ~~((The department shall coordinate with existing entities involved in health professional recruitment when developing the registry for the health professional temporary substitute resource pool.))~~

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.57A, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.88 RCW.

(3) Participating ~~((health care professionals shall receive))~~ sites may:

(a) Receive reimbursement for substitute provider travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060; and

(b) ~~((Medical))~~ Receive reimbursement for the cost of malpractice insurance ~~((purchased by the department, or the department may reimburse participants for medical malpractice insurance premium costs for medical liability while providing health care services in the program,))~~ if the services provided are not covered by the ~~((participant's))~~ substitute provider's or local provider's existing medical malpractice insurance~~((, and~~

~~((e) Information on back up support from other physicians and hospitals in the area to the extent necessary and available)).~~ Reimbursement for malpractice insurance shall only be made available to sites that incur additional costs for substitute provider coverage.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) ~~((The department may require a community match for assistance provided in subsection (3) of this section if it determines that adequate community resources exist.~~

~~(6) The maximum continuous period of time))~~ A participating (health professional may serve in a community is ninety days) site may receive reimbursement for substitute provider assistance as provided for in subsection (3) of this section for up to ninety days during any twelve-month period. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification. ~~((The community shall be responsible for all salary expenses of participating health professionals))~~

(6) Participating sites shall:

(a) Be responsible for all salary expenses for the temporary substitute provider.

(b) Provide the temporary substitute provider with referral and back-up coverage information.

Sec. 3. RCW 70.180.040 and 1990 c 271 s 4 are each amended to read as follows:

(1) Requests for a temporary substitute health care professional may be made to the department by the certified health plan, local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department ~~((shall))~~ may provide directly or contract for services to:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments.

Passed the House February 4, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 25, 1994.

Filed in Office of Secretary of State March 25, 1994.

CHAPTER 104

[House Bill 1466]

MOTORIZED WHEELCHAIR WARRANTIES

AN ACT Relating to motorized wheelchair warranties; and adding a new chapter to Title 19 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) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device assisting mobility.

(2) "Consumer" means any of the following:

(a) The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair;

(c) A person who may enforce a warranty on a motorized wheelchair; or

(d) A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

(3) "Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

(4) "Early termination cost" means an expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a motorized wheelchair to a manufacturer under section 3(2)(b) of this act. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(5) "Early termination savings" means an expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a motorized wheelchair to a manufacturer under section 3(2)(b) of this act. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(6) "Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of the person, including an importer, a distributor, factory branch, distributor branch, and a warrantor of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

(7) "Motorized wheelchair" means a motor-driven wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(8) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.

(9) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

(10) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a motorized wheelchair, and that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the motorized wheelchair by a consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motorized wheelchair or within one year after first delivery of a motorized wheelchair to a consumer, whichever is sooner:

(a) An attempted repair by the manufacturer, motorized wheelchair lessor, or the manufacturer's authorized motorized dealer is made to the same warranty nonconformity at least four times and the nonconformity continues; or

(b) The motorized wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity.

NEW SECTION. Sec. 2. A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty must be for at least one year after the first delivery of the motorized wheelchair to the consumer. If the manufacturer fails to furnish an express warranty as required under this section, the motorized wheelchair is covered by an implied warranty as if the manufacturer had furnished an express warranty to the consumer as required under this section.

NEW SECTION. Sec. 3. (1) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor, or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to the consumer, the nonconformity must be repaired.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do one of the following, whichever is appropriate:

(a) At the direction of a consumer described under section 1(2)(a), (b), or (c) of this act, do one of the following:

(i) Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs; or

(ii) Accept return of the motorized wheelchair and refund to the consumer and to a holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subsection (2)(a)(ii), a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denomina-

tor of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the motorized wheelchair was driven before the consumer first reported the nonconformity to the motorized wheelchair dealer; or

(b)(i) For a consumer described in section 1(2)(d) of this act, accept return of the motorized wheelchair, refund to the motorized wheelchair lessor and to a holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(ii) Under this subsection (2)(b), the current value of the written lease equals the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth the value, less the motorized wheelchair lessor's early termination savings.

(iii) Under this subsection (2)(b), a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor, or motorized wheelchair dealer.

(3) To receive a comparable new motorized wheelchair or a refund due under subsection (2)(a) of this section, a consumer described under section 1(2)(a), (b), or (c) of this act shall offer to the manufacturer of the motorized wheelchair having the nonconformity to transfer possession of the motorized wheelchair to the manufacturer. Within thirty days after the offer, the manufacturer shall provide the consumer with a comparable new motorized wheelchair or a refund. When the manufacturer provides a new motorized wheelchair or refund under this subsection, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity.

(4)(a) To receive a refund due under subsection (2)(b) of this section, a consumer described under section 1(2)(d) of this act shall offer to return the motorized wheelchair having the nonconformity to its manufacturer. Within thirty days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity.

(b) To receive a refund due under subsection (2)(b) of this section, a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer. Within thirty days after the offer, the manufacturer shall provide a refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized

wheelchair lessor shall provide to the manufacturer the endorsements necessary to transfer legal possession to the manufacturer.

(c) A person may not enforce the lease against the consumer after the consumer receives a refund due under subsection (2)(b) of this section.

(5) A person may not sell or lease again in this state a motorized wheelchair returned by a consumer or motorized wheelchair lessor in this state under subsection (2) of this section or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, unless full disclosure of the reasons for return is made to a prospective buyer or lessee.

NEW SECTION. Sec. 4. This chapter does not limit rights or remedies available under other law to a consumer.

NEW SECTION. Sec. 5. A waiver by a consumer of rights under this section is void.

NEW SECTION. Sec. 6. In addition to pursuing another remedy, a consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action under this section twice the amount of pecuniary loss, together with costs, disbursements, reasonable attorneys' fees, and equitable relief that the court determines is appropriate.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act shall constitute a new chapter in Title 19 RCW.

Passed the House January 26, 1994.

Passed the Senate March 8, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 105

[Engrossed House Bill 2327]

STUDENTS WITH DISABILITIES—ACCESS TO HIGHER EDUCATION

AN ACT Relating to students with disabilities; adding new sections to chapter 28B.10 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is a fundamental aspiration of the people of Washington that individuals be afforded the opportunity to compete academically. Accordingly, it is an appropriate act of state government, in furtherance of this aspiration, to make available appropriate support services to those individuals who are able to attend college by virtue of their potential and desire, but whose educational progress and success is hampered by a lack of accommodation.

Furthermore, under existing federal and state laws, institutions of higher education are obligated to provide services to students with disabilities. The legislature does not intend to confer any new or expanded rights, however, the

intent of this act is to provide a clearer, more succinct statement of those rights than is presently available and put Washington on record as supporting those rights.

It is the intent of the legislature that these services be provided within the bounds of the law. Therefore, the institution of higher education's obligations to provide reasonable accommodations are limited by the defenses provided in federal and state statutes, such as undue financial burden and undue hardship.

NEW SECTION. Sec. 2. Each student with one or more disabilities is entitled to receive a core service only if the service is reasonably needed to accommodate the student's disabilities. The requesting student shall make a reasonable request for core services in a timely manner and the institution of higher education or agency providing the service shall respond reasonably and in a timely manner.

NEW SECTION. Sec. 3. Each institution of higher education shall ensure that students with disabilities are reasonably accommodated within that institution. The institution of higher education shall provide students with disabilities with the appropriate core service or services necessary to ensure equal access.

Core services shall include, but not be limited to:

- (1) Flexible procedures in the admissions process that use a holistic review of the student's potential, including appropriate consideration in state-wide and institutional alternative admissions programs;
- (2) Early registration or priority registration;
- (3) Sign language, oral and tactile interpreter services, or other technological alternatives;
- (4) Textbooks and other educational materials in alternative media, including, but not limited to, large print, braille, electronic format, and audio tape;
- (5) Provision of readers, notetakers, scribes, and proofreaders including recruitment, training, and coordination;
- (6) Ongoing review and coordination of efforts to improve campus accessibility, including but not limited to, all aspects of barrier-free design, signage, high-contrast identification of hazards of mobility barriers, maintenance of access during construction, snow and ice clearance, and adequate disability parking for all facilities;
- (7) Facilitation of physical access including, but not limited to, relocating of classes, activities, and services to accessible facilities and orientation if route of travel needs change, such as at the beginning of a quarter or semester;
- (8) Access to adaptive equipment including, but not limited to, TDDs, FM communicators, closed caption devices, amplified telephone receivers, closed circuit televisions, low-vision reading aids, player/recorders for 15/16 4-track tapes, photocopy machines able to use eleven-by-seventeen inch paper, braille devices, and computer enhancements;

(9) Referral to appropriate on-campus and off-campus resources, services, and agencies;

(10) Release of syllabi, study guides, and other appropriate instructor-produced materials in advance of general distribution, and access beyond the regular classroom session to slides, films, overheads and other media and taping of lectures;

(11) Accessibility for students with disabilities to tutoring, mentoring, peer counseling, and academic advising that are available on campus;

(12) Flexibility in test taking arrangements;

(13) Referral to the appropriate entity for diagnostic assessment and documentation of the disability;

(14) Flexibility in timelines for completion of courses, certification, and degree requirements;

(15) Flexibility in credits required to be taken to satisfy institutional eligibility for financial aid; and

(16) Notification of the institution of higher education's policy of nondiscrimination on the basis of disability and of steps the student may take if he or she believes discrimination has taken place. This notice shall be included in all formal correspondence that communicates decisions or policies adversely affecting the student's status or rights with the institution of higher education. This notice shall include the phone numbers of the United States department of education, the United States office of civil rights, and the Washington state human rights commission.

NEW SECTION. Sec. 4. Reasonable accommodation for students with disabilities shall be provided as appropriate for all aspects of college and university life, including but not limited to: Recruitment, the application process, enrollment, registration, financial aid, course work, research, academic counseling, housing programs owned or operated by the institution of higher education, and nonacademic programs and services.

NEW SECTION. Sec. 5. Sections 2 through 4 of this act are each added to chapter 28B.10 RCW.

Passed the House February 9, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 106

[Engrossed Substitute House Bill 1847]

VISION CARE CONSUMER ASSISTANCE ACT

AN ACT Relating to the vision care consumer assistance act; and adding a new chapter to Title 18 RCW.

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

NEW SECTION. Sec. 1. LEGISLATIVE INTENT. The legislature finds that in the newly reformed health care delivery system it is necessary to clarify providers' roles to ensure that they are working together to maximize patient access while controlling costs. This is especially important in the vision care industry, where the potential for confusion exists due to some overlapping scopes of practice among licensed providers.

The legislature finds that boards regulating health care professions should be mindful of the necessary balance between public safety and access to affordable care, and adopt rules that are consistent with their legislative intent. The risk that this balance may be lost is especially high in the optical industry, where competitive pressures have led to the involvement of the federal trade commission. The legislature recognizes its role in ensuring appropriate access to vision care for state residents by clarifying necessary prescription content and ensuring prescription release to the patient.

NEW SECTION. Sec. 2. DEFINITIONS. For purposes of this chapter, the following definitions apply:

(1) "Dispensing" means the retail delivery of ophthalmic goods to the patient by a prescriber or optician.

(2) "Eye examination" means a testing process administered by a prescriber that includes the process of determining the refractive condition of a patient's eyes. If requested by the patient, it also determines the appropriateness of contact lenses.

(3) "Fitting" means the performance of mechanical procedures and measurements necessary to adapt and fit eyeglasses or contact lenses from a written prescription. In the case of contact lenses, the prescription must be in writing and fitting includes the selection of the physical characteristics of the lenses including conversion of the spectacle power to contact lens equivalents, lens design, material and manufacturer of the lenses, and supervision of the trial wearing of the lenses which may require incidental revisions during the fitting period. The revisions may not alter the effect of the written prescription.

(4) "Ophthalmic goods" means eyeglasses or a component or components of eyeglasses, and contact lenses.

(5) "Ophthalmic services" means the measuring, fitting, adjusting, and fabricating of ophthalmic goods subsequent to an eye examination.

(6) "Optician" means a person licensed under chapter 18.34 RCW.

(7) "Patient" means a person who has had an eye examination.

(8) "Practitioner" includes prescribers and opticians.

(9) "Prescriber" means an ophthalmologist or optometrist who performs eye examinations under chapter 18.53, 18.57, or 18.71 RCW.

(10) "Prescription" means the written directive from a prescriber for corrective lenses and consists of the refractive powers. If the patient wishes to purchase contact lenses, the prescription must contain a notation that the patient is "ok for contacts" or similar language confirming there are no contraindications for contacts.

(11) "Secretary" means the secretary of the department of health.

NEW SECTION. Sec. 3. SEPARATION OF EXAMINATION AND DISPENSING. (1) No prescriber shall:

(a) Fail to provide to the patient one copy of the patient's prescription at the completion of the eye examination. A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that prescriber would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination or prescription, or both, to a patient on a requirement that the patient agree to purchase ophthalmic goods from the prescriber or a dispenser approved by the prescriber;

(c) Fail to include a notation of "ok for contacts" or similar language on the prescription if the prescriber would have fitted the patient himself or herself, provided there are no contraindications for contacts, and if the patient has requested contact lenses. Such a notation will indicate to the practitioner fitting the contact lenses that the initial fitting and follow-up must be completed within six months of the date of the eye examination. The prescriber will inform the patient that failure to complete the initial fitting and obtain the follow-up evaluation by a prescriber within the six-month time frame will void the "ok for contacts" portion of the prescription. The prescriber who performs the follow-up will place on the prescription "follow-up completed," or similar language, and include his or her name and the date of the follow-up. Patients who comply with both the initial fitting and follow-up requirements will then be able to obtain replacement contact lenses until the expiration date listed on the prescription. If the prescriber concludes the ocular health of the eye presents a contraindication for contact lenses, a verbal explanation of that contraindication must be given to the patient by the prescriber at the time of the eye examination and documentation maintained in the patient's records. However, a prescriber may exclude categories of contact lenses where clinically indicated;

(d) Include a prescription expiration date of less than two years, unless warranted by the ocular health of the eye. If a prescription is to expire in less than two years, an explanatory notation must be made by the prescriber in the patient's record and a verbal explanation given to the patient at the time of the eye examination;

(e) Charge the patient a fee in addition to the prescriber's examination fee as a condition to releasing the prescription to the patient. However, a prescriber

may charge a reasonable, additional fee for verifying ophthalmic goods dispensed by another practitioner if that fee is imposed at the time the verification is performed; or

(f) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another practitioner. In prohibiting the use of waivers and disclaimers of liability under this subsection, it is not the intent of the legislature to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

(2) Nothing contained in this title shall prevent a prescriber or optician from measuring the refractive power of eyeglass lenses and duplicating the eyeglass lenses upon the request of a patient.

NEW SECTION. **Sec. 4. MAXIMIZING COMPETITION IN THE OPTICAL INDUSTRY.** (1) If the patient chooses to purchase contact lenses from an optician and the prescription is silent regarding contact lenses, the optician shall contact the prescriber and request a written prescription with a notation of "ok for contacts" or similar language. However, if no evaluation for contact lenses had been done during the eye examination, the prescriber may decline to approve the prescription for contact lenses without further evaluation.

(2) If a patient chooses to purchase contact lenses from an optician, the optician shall advise the patient, in writing, that a prescriber is to verify the performance of the initial set of contact lenses on the eyes within six months of the date of the eye examination or the "ok for contacts" portion of the prescription will be void. The patient shall be requested to sign the written advisement and the signed document will be maintained as part of the patient's records. If the patient declines to sign the document, it shall be noted in the record.

(3) No practitioner may dispense contact lenses based on a prescription that is over two years old.

(4) All fitters and dispensers of contact lenses shall distribute safety pamphlets to their patients in order to improve consumer decisions as well as health-related decisions.

(5) It is unprofessional conduct under chapter 18.130 RCW for a practitioner to fail to comply with this section.

NEW SECTION. **Sec. 5. EXPANSION OF SCOPE OF PRACTICE.** Nothing in this chapter shall be construed as expanding the scope of practice of a vision care practitioner beyond that currently authorized by state law.

NEW SECTION. **Sec. 6. RULE MAKING.** (1) The secretary shall adopt rules necessary to implement the purposes of this chapter. The secretary is specifically directed to adopt rules that maximize competition in the delivery of vision care limited only by the existing scope of practice of the professions and

by provisions preventing demonstrated and substantial threats to the public's vision health.

(2) This chapter and the rules adopted by the secretary pursuant to this section shall supersede rules adopted pursuant to chapter 18.34, 18.53, 18.57, or 18.71 RCW that conflict with this chapter. To the extent that, in the secretary's opinion, these rules conflict with the purposes of this chapter, the secretary may declare such rules null and void.

NEW SECTION. **Sec. 7. SHORT TITLE.** This chapter may be cited as the consumer access to vision care act.

NEW SECTION. **Sec. 8. CAPTIONS NOT LAW.** Section captions as used in this chapter constitute no part of the law.

NEW SECTION. **Sec. 9. 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. 10. CODIFICATION DIRECTION.** Sections 1 through 9 of this act shall constitute a new chapter in Title 18 RCW.

Passed the House February 7, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 107

[House Bill 2157]

MIGRATORY WATERFOWL ART COMMITTEE—TERMINATION REPEALED

AN ACT Relating to migratory waterfowl; and repealing RCW 77.12.900 and 77.12.901.

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

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

(1) RCW 77.12.900 and 1988 c 186 s 3; and

(2) RCW 77.12.901 and 1988 c 186 s 4.

Passed the House February 4, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 108

[House Bill 2160]

PUBLIC HOUSING AUTHORITY EMPLOYEES—BACKGROUND CHECKS

AN ACT Relating to background checks on employees of public housing authorities; and amending RCW 43.43.830.

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

Sec. 1. RCW 43.43.830 and 1992 c 145 s 16 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment,

certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(7) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself or a patient in a state hospital as defined in chapter 72.23 RCW.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 109

[House Bill 2169]

REGIONAL TRANSIT AUTHORITY BOARD APPOINTMENTS

AN ACT Relating to regional transit authority board appointments; and amending RCW 81.112.040.

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

Sec. 1. RCW 81.112.040 and 1992 c 101 s 4 are each amended to read as follows:

(1) The regional transit authority shall be governed by a board consisting of representatives appointed by the county executive and confirmed by the council or other legislative authority of each member county. Membership shall be based on population from that portion of each county which lies within the service area. Board members shall be appointed initially on the basis of one for each one hundred forty-five thousand population within the county. Such appointments shall be made following consultation with city and town jurisdictions within the service area. In addition, the secretary of transportation or the secretary's designee shall serve as a member of the board and may have voting status with approval of a majority of the other members of the board. Only board members, not including alternates or designees, may cast votes.

Each member of the board, except the secretary of transportation or the secretary's designee, shall be:

(a) An elected official who serves on the legislative authority of ((or as mayor of)) a city or as mayor of a city within the boundaries of the authority((or));

(b) On the legislative authority of the county (~~and~~), if fifty percent of the population of (~~whose~~) the legislative official's district is within the authority boundaries; or

(c) A county executive from a member county within the authority boundaries.

When making appointments, each county executive shall ensure that representation on the board includes an elected city official representing the largest city in each county and assures proportional representation from other cities, and representation from unincorporated areas of each county within the service area. At least one-half of all appointees from each county shall serve on the governing authority of a public transportation system.

Members appointed from each county shall serve staggered four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

The governing board shall be reconstituted, with regard to the number of representatives from each county, on a population basis, using the official office of financial management population estimates, five years after its initial formation and, at minimum, in the year following each official federal census. The board membership may be reduced, maintained, or expanded to reflect population changes but under no circumstances may the board membership exceed twenty-five.

(2) Major decisions of the authority shall require a favorable vote of two-thirds of the entire membership of the voting members. "Major decisions" include at least the following: System plan adoption and amendment; system phasing decisions; annual budget adoption; authorization of annexations; modification of board composition; and executive director employment.

(3) Each member of the board is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation as provided in RCW 43.03.250.

Passed the House February 4, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 110

[Substitute House Bill 2180]

GUARDIANS AD LITEM

AN ACT Relating to appointment of guardians ad litem; and amending RCW 26.44.053 and 13.34.100.

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

Sec. 1. RCW 26.44.053 and 1993 c 241 s 4 are each amended to read as follows:

(1) In any (~~contested~~) judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court shall appoint a guardian ad litem for the child (~~(- PROVIDED, That)~~). The requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel in the proceedings.

(2) At any time prior to or during a hearing in such a case, the court may, on its own motion, or the motion of the guardian ad litem, or other parties, order the examination by a physician, psychologist, or psychiatrist, of any parent or child or other person having custody of the child at the time of the alleged child abuse or neglect, if the court finds such an examination is necessary to the proper determination of the case. The hearing may be continued pending the completion of such examination. The physician, psychologist, or psychiatrist conducting such an examination may be required to testify concerning the results of such examination and may be asked to give his or her opinion as to whether the protection of the child requires that he or she not be returned to the custody of his or her parents or other persons having custody of him or her at the time of the alleged child abuse or neglect. Persons so testifying shall be subject to cross-examination as are other witnesses. No information given at any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the abuse or neglect of the child.

(3) A parent or other person having legal custody of a child alleged to be abused or neglected shall be a party to any proceeding that may impair or impede such person's interest in and custody or control of the child.

Sec. 2. RCW 13.34.100 and 1993 c 241 s 2 are each amended to read as follows:

(1) The court shall (~~in all contested cases~~) appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. (~~A guardian ad litem may be appointed at the discretion of the court in uncontested proceedings.~~) The requirement of a guardian ad litem (~~shall~~) may be deemed satisfied if the child is represented by independent counsel in the proceedings.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) Training related to the guardian's duties;
- (c) Number of years' experience as a guardian ad litem;
- (d) Number of appointments as a guardian ad litem; and
- (e) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

Passed the House February 11, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 111

[Substitute House Bill 2212]

DISTRICT COURT JUDGES

AN ACT Relating to the number of district court judges; and amending RCW 3.34.010.

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

Sec. 1. RCW 3.34.010 and 1991 c 354 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, ~~((three))~~ two; Asotin, one; Benton, two; Chelan, ~~((one))~~ two; Clallam, ~~((one))~~ two; Clark, ~~((four))~~ five; Columbia, one; Cowlitz, two; Douglas, ~~((one))~~ two; Ferry, ~~((two))~~ one; Franklin, one; Garfield, one; Grant, ~~((one))~~ two; Grays Harbor, two; Island, ~~((three))~~ one; Jefferson, one; King, twenty-six; Kitsap,

~~((two))~~ three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, ~~((two))~~ one; Pierce, eleven; San Juan, one; Skagit, ~~((three))~~ two; Skamania, one; Snohomish, ~~((eight))~~ seven; Spokane, nine; Stevens, ~~((two))~~ one; Thurston, ~~((one))~~ two; Wahkiakum, one; Walla Walla, ~~((three))~~ two; Whatcom, two; Whitman, ~~((two))~~ one; Yakima, ~~((six: PROVID- ED, That))~~ four. This number may be increased ~~((in accordance with a resolution of the county commissioners under))~~ only as provided in RCW 3.34.020.

Passed the House February 4, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 112

[Substitute House Bill 2235]

PERIODICALS AND MAGAZINES—BUSINESS AND OCCUPATION TAX

AN ACT Relating to business and occupation taxes for periodicals and magazines; amending RCW 82.04.280; adding a new section to chapter 82.04 RCW; adding a new section to chapter 35.21 RCW; and creating new sections.

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

Sec. 1. RCW 82.04.280 and 1993 sp.s. c 25 s 303 are each amended to read as follows:

Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting

station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

***NEW SECTION.** Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

This chapter shall not apply to a newspaper carrier under eighteen years of age.

*Sec. 2 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 35.21 RCW to read as follows:

A city or town, including a code city, may not license newspaper carriers under eighteen years of age for either regulatory or revenue-generating purposes.

***NEW SECTION.** Sec. 4. *Each person employing or contracting with a juvenile newspaper carrier for delivery of newspapers shall notify the carrier in writing that the exemption provided in section 2 of this act expires when the carrier reaches eighteen years of age.*

*Sec. 4 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 5. Section 1 of this act shall apply retroactively to July 1, 1993.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 28, 1994.

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

"I am returning herewith, without my approval as to sections 2 and 4, Substitute House Bill No. 2235 entitled:

"AN ACT Relating to business and occupation taxes for periodicals and magazines;"

This bill relates to reducing the business and occupation tax rate for publishers of newspapers, magazines, and periodicals and provides an exemption from state, city, and town business and occupation taxes for juvenile newspaper carriers.

Sections 2 and 4 of the bill provide a state business and occupation exemption for newspaper carriers under the age of eighteen. Another bill which passed this session, Substitute House Bill No. 2671, provides B&O tax relief for small businesses, and will effectively relieve juvenile newspaper carriers of all B&O tax liability. In addition, under Substitute House Bill No. 2671, these carriers will not have to pay a \$15 fee to register with the Department of Revenue. As a result of this general tax relief for small businesses, sections 2 and 4 of Substitute House Bill No. 2235 are redundant and unnecessary.

With the exception of sections 2 and 4, Substitute House Bill No. 2235 is approved."

CHAPTER 113

[Substitute House Bill 2246]

SUBSTITUTE SCHOOL EMPLOYEES—REIMBURSEMENT

AN ACT Relating to reimbursement for substitute certificated or classified school employees; amending RCW 28A.160.220; adding a new section to chapter 28A.300 RCW; and recodifying RCW 28A.160.220.

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

Sec. 1. RCW 28A.160.220 and 1990 c 33 s 147 are each amended to read as follows:

If the superintendent of public instruction or the state board of education, in carrying out their powers and duties under Title 28A RCW, request the service of any certificated or classified employee of a school district upon any committee formed for the purpose of furthering education within the state, or within any school district therein, and such service would result in a need for a school district to employ a substitute for such certificated or classified employee during such service, payment for such a substitute may be made by the superintendent of public instruction from funds appropriated by the legislature for the current use of the common schools and such payments shall be construed as amounts needed for state support to the common schools under RCW 28A.150.380. If such substitute is paid by the superintendent of public instruction, no deduction shall be made from the salary of the certificated or classified employee. In no event shall a school district deduct from the salary of a certificated or classified

employee serving on such committee more than the amount paid the substitute employed by the district.

NEW SECTION. Sec. 2. RCW 28A.160.220 is recodified as a new section in chapter 28A.300 RCW.

Passed the House February 10, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 114

[House Bill 2275]

DISLOCATED FOREST PRODUCTS WORKERS—MORTGAGE AND RENTAL ASSISTANCE

AN ACT Relating to mortgage and rental assistance for dislocated forest products workers; amending RCW 43.63A.600, 43.63A.610, 43.63A.620, 43.63A.630, and 43.63A.640; and providing an effective date.

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

Sec. 1. RCW 43.63A.600 and 1993 c 280 s 77 are each amended to read as follows:

(1) The department of community, trade, and economic development, as a member of the agency timber task force and in consultation with the economic recovery coordination board, shall establish and administer the emergency mortgage and rental assistance program. The department shall identify the communities most adversely affected by reductions in timber harvest levels and shall prioritize assistance under this program to these communities. The department shall work with the department of social and health services and the timber recovery coordinator to develop the program in timber impact areas. Organizations eligible to receive grant funds for distribution under the program are those organizations that are eligible to receive assistance through the Washington housing trust fund. The department shall disburse the funds to eligible local organizations as grants. The local organizations shall use the funds to make grants or loans as specified in RCW 43.63A.600 through 43.63A.640. If funds are disbursed as loans, the local organization shall establish a revolving grant and loan fund with funds received as loan repayments and shall continue to make grants or loans or both grants and loans from funds received as loan repayments to dislocated forest products workers eligible under the provisions of RCW 43.63A.600 through 43.63A.640 and to other persons residing in timber impact areas who meet the requirements of RCW 43.63A.600 through 43.63A.640.

(2) The goals of the program are to:

(a) Provide temporary emergency mortgage loans or rental assistance grants or loans on behalf of dislocated forest products workers in timber impact areas who are unable to make ((~~current~~)) mortgage, property tax, or rental payments

on their permanent residences and are subject to immediate eviction for nonpayment of mortgage installments, property taxes, or nonpayment of rent;

(b) Prevent the dislocation of individuals and families from their permanent residences and their communities; and

(c) Maintain economic and social stability in timber impact areas.

Sec. 2. RCW 43.63A.610 and 1991 c 315 s 24 are each amended to read as follows:

Emergency mortgage assistance shall be provided under the following general guidelines:

(1) Loans provided under the program shall not exceed an amount equal to twenty-four months of mortgage payments.

(2) The maximum loan amount allowed under the program shall not exceed twenty thousand dollars.

(3) Loans shall be made to applicants who meet specific income guidelines established by the department.

(4) Loan payments shall be made directly to the mortgage lender.

(5) Loans shall be granted on a first-come, first-served basis.

(6) Repayment of loans provided under the program shall be made to eligible local organizations, and must not take more than twenty years. Funds repaid to the program shall be used as grants or loans under the provisions of RCW 43.63A.600 through 43.63A.640.

~~((7) The department may provide for emergency short-term loans.))~~

Sec. 3. RCW 43.63A.620 and 1991 c 315 s 25 are each amended to read as follows:

Emergency rental assistance shall be provided under the following general guidelines:

(1) Rental assistance provided under the program may be in the form of loans or grants and shall not exceed an amount equal to twenty-four months of ~~((mortgage))~~ rental payments.

(2) Rental assistance shall be made to applicants who meet specific income guidelines established by the department.

(3) Rental payments shall be made directly to the landlord.

(4) Rental assistance shall be granted on a first-come, first-served basis.

Sec. 4. RCW 43.63A.630 and 1991 c 315 s 26 are each amended to read as follows:

To be eligible for assistance under the program, an applicant must:

(1) Be unable to keep mortgage or rental payments current, due to a loss of employment, and shall be at significant risk of eviction;

(2) Have his or her permanent residence located in an eligible community;

(3) If requesting emergency mortgage assistance, be the owner of an equitable interest in the permanent residence and intend to reside in the home being financed;

(4) Be actively seeking new employment or be enrolled in a training program approved by the director; and

(5) Submit an application for assistance to an organization eligible to receive funds under RCW 43.63A.600 (~~by June 30, 1996~~).

Sec. 5. RCW 43.63A.640 and 1991 c 315 s 27 are each amended to read as follows:

The department shall carry out the following duties:

(1) Administer the program;

(2) Identify organizations eligible to receive funds to implement the program;

(3) Develop and adopt the necessary rules and procedures for implementation of the program and for dispersal of program funds to eligible organizations;

(4) Establish the interest rate for repayment of loans at two percent below the market rate;

(5) Work with lending institutions and social service providers in the eligible communities to assure that all eligible persons are informed about the program;

(6) Utilize federal and state programs that complement or facilitate carrying out the program;

(7) (~~Submit a report to the senate commerce and labor committee and the house of representatives housing committee by January 31, 1992~~) Ensure that local eligible organizations that dissolve or become ineligible assign their program funds, rights to loan repayments, and loan security instruments, to the government of the county in which the local organization is located. If the county government accepts the program assets described in this subsection, it shall act as a local eligible organization under the provisions of RCW 43.63A.600 through 43.63A.640. If the county government declines to participate, the program assets shall revert to the department.

NEW SECTION. Sec. 6. This act shall take effect July 1, 1994.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 115

[Substitute House Bill 2277]

TEACHERS' EVALUATIONS

AN ACT Relating to teacher evaluation; amending RCW 28A.405.100; and providing an effective date.

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

Sec. 1. RCW 28A.405.100 and 1990 c 33 s 386 are each amended to read as follows:

(1) The superintendent of public instruction shall establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be developed in the following categories: Instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendant problems; and interest in teaching pupils and knowledge of subject matter.

Every board of directors shall, in accordance with procedure provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluative criteria must contain as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that evaluative criteria have been so prepared by the district.

Except as provided in subsection (5) of this section, it shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel, hereinafter referred to as "employees" in this section, shall be observed for the purposes of evaluation at least twice in the performance of their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the ~~((evaluation))~~ observation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

Every employee whose work is judged unsatisfactory based on district evaluation criteria shall be notified in writing of stated specific areas of deficiencies along with a suggested specific and reasonable program for improvement on or before February 1st of each year. A probationary period shall be established beginning on or before February 1st and ending no later than May 1st. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of directors for approval. During the probationary period the evaluator shall meet with the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas

of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to the good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement shall be specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

The establishment of a probationary period shall not be deemed to adversely affect the contract status of an employee within the meaning of RCW 28A.405.300.

(2) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. Such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories: Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

(3) Each certificated employee shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole purpose the aiding of the administrator in his or her assessment of the employee's professional performance.

(4) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated employees or administrators in accordance with this section, as now or hereafter amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.405.210, or the discharge of such evaluator under RCW 28A.405.300.

(5) After an employee has four years of satisfactory evaluations under subsection (1) of this section, a school district may use a short form of evaluation, a locally bargained evaluation emphasizing professional growth, an evaluation under subsection (1) of this section, or any combination thereof. The short form of evaluation shall include either a thirty minute observation during the school year with a written summary or a final annual written evaluation based on the criteria in subsection (1) of this section and based on at least two observation periods during the school year totaling at least sixty minutes without a written summary of such observations being prepared. However, the evaluation process set forth in subsection (1) of this section shall be followed at least once

every three years ~~((and an employee or evaluator may request))~~ unless this time is extended by a local school district under the bargaining process set forth in chapter 41.59 RCW. The employee or evaluator may require that the evaluation process set forth in subsection (1) of this section be conducted in any given school year. ((The short form evaluation process)) No evaluation other than the evaluation authorized under subsection (1) of this section may ((not)) be used as a basis for determining that an employee's work is unsatisfactory under subsection (1) of this section ((not)) or as probable cause for the nonrenewal of an employee's contract under RCW 28A.405.210 unless an evaluation process developed under chapter 41.59 RCW determines otherwise.

NEW SECTION. Sec. 2. This act shall take effect September 1, 1994.

Passed the House February 8, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 116

[Substitute House Bill 2294]

STUDENT TRANSPORTATION—TWO-YEAR LEVIES AUTHORIZED

AN ACT Relating to allowing two-year levies for the acquisition of motor vehicles for student transportation; and amending RCW 84.52.053 and 84.52.0531.

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

Sec. 1. RCW 84.52.053 and 1987 1st ex.s. c 2 s 103 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of ~~((additional))~~ taxes by school districts, when authorized so to do by the ~~((electors))~~ voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state ~~((as amended by Amendment 79 and as thereafter amended, at a special or general election to))~~. Elections for such taxes shall be held in the year in which the levy is made or, in the case of ((a)) propositions authorizing two-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, ((or both, at a special or general election to be held)) in the year in which the first annual levy is made: PROVIDED, That once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year period, no further additional tax levies for maintenance and operation support of the district for that period may be authorized.

A special election may be called and the time therefor fixed by the board of school directors, 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".

Sec. 2. RCW 84.52.0531 and 1993 c 465 s 1 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1992, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1991.

(2) For the purpose of this section, the basic education allocation shall be determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350: 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.545 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.

(3) For excess levies for collection in calendar year 1993 and thereafter, the maximum dollar amount shall be the sum of (a) and (b) of this subsection minus (c) of this subsection:

(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 subsection (5) of this section;

(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.545 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.545 RCW in such computation;

(c) The maximum amount of state matching funds under RCW 28A.500.010 for which the district is eligible in that tax collection year.

(4) For excess levies for collection in calendar year 1993 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) 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 excess levies for collection in calendar year 1993 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 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 (6) 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;

(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; and

(e) For levies to be collected in calendar years 1994 and 1995 the maximum levy rate shall be the district's maximum levy percentage for 1993 plus four percent reduced by any levy reduction funds. For levies collected in 1996, the prior year shall mean 1993.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" shall mean the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" shall mean the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

Passed the House February 12, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 117

[Engrossed House Bill 2302]

IRRIGATION DISTRICTS—AUTHORITY TO SELL OR LEASE PROPERTY

AN ACT Relating to irrigation districts; amending RCW 87.03.135; and adding a new section to chapter 87.03 RCW.

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

Sec. 1. RCW 87.03.135 and 1975 1st ex.s. c 163 s 1 are each amended to read as follows:

~~((Any))~~ An irrigation district ~~((shall have))~~ has the power to sell or lease ~~((any real estate or))~~ personal property owned by ~~((such))~~ the district~~(;)~~ whenever ~~((the))~~ its board of directors ~~((shall, by unanimous vote)),~~ by resolution: Determines that ~~((such))~~ the property is not necessary or needed for the use of the district; and authorizes the sale or lease. No sale or lease of such property shall be made until notice ~~((thereof shall be))~~ of the sale or lease is given by publication at least twenty days before the date of ~~((said))~~ the sale or lease ~~((of said property))~~ in ~~((some))~~ a newspaper of general circulation in the county where the property or part ~~((thereof))~~ of the property is located~~(; if there be one, and if there be none, then)~~ or, if there is no such newspaper in the county, in ((some)) a newspaper of general circulation published in an adjoining county((; said)). The publication ((to)) shall be made at least once a week during three consecutive weeks before the day fixed for ~~((the))~~ making ~~((of such))~~ the sale or lease~~((, and)).~~ The publication shall contain notice of the intention of the board of directors to make ~~((such))~~ the sale or lease and shall state the time and place at which proposals for ~~((such))~~ the sale or lease will be considered and at which the sale or lease will be made~~((; PROVIDED, That the provisions of this section relating to publication of notice shall not apply when the value of the property to be sold or leased is less than five hundred dollars)).~~ Any such property so sold or leased shall be sold or leased to the highest and best bidder. ~~((The provisions of this section shall not apply to the sale or lease of lands acquired by an irrigation district through its purchase of said lands for the nonpayment of its irrigation assessments;))~~

The provisions of this section relating to publication of notice shall not apply when the value of the property to be sold or leased is less than five hundred dollars.

NEW SECTION. Sec. 2. A new section is added to chapter 87.03 RCW to read as follows:

An irrigation district has the power to sell or lease real property owned by the district whenever its board of directors, by resolution: Determines that the property is not necessary or needed for the use of the district; and authorizes the sale or lease. Notice of the district's intention to sell or lease the property shall be made by publication at least twenty days before the transaction is executed regarding the property in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks. The notice shall state whether the sale or lease will be negotiated by the district or will be awarded by bid.

The district may lease the property from year to year, afford the lessee the option to purchase the property, sell the property on contract for deferred payments, sell the property pursuant to a promissory note secured by a mortgage or deed of trust, or sell the property for cash and conveyance by deed. The appropriate documents shall be executed by the president of the board and acknowledged by the secretary.

The resolution authorizing the sale or lease shall be entered in the minutes of the board and shall fix the price at which the lease, option, or sale may be made. The price shall be not less than the reasonable market value of the property; however, the board may, without consideration, dedicate, grant, or convey district land or easements in district land for highway or public utility purposes that convenience the inhabitants of the district if the board deems that the action will enhance the value of the remaining district land to an extent equal to or greater than the value of the land or easement dedicated, granted, or conveyed.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 118

[House Bill 2320]

SEWERAGE OR DISPOSAL SYSTEMS—REVIEW AND APPROVAL

AN ACT Relating to review and approval of sewerage or disposal systems; and amending RCW 90.48.110.

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

Sec. 1. RCW 90.48.110 and 1987 c 109 s 130 are each amended to read as follows:

((AH)) (1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter.

(2) To promote efficiency in service delivery and intergovernmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

Passed the House February 8, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 119

[House Bill 2369]

CITIES WITH COMMISSION FORM OF GOVERNMENT—ELECTIONS

AN ACT Relating to elections in cities with a commission plan of government; and amending RCW 35.17.020.

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

Sec. 1. RCW 35.17.020 and 1979 ex.s. c 126 s 17 are each amended to read as follows:

(1) All regular elections in cities organized under the statutory commission form of government shall be held quadrennially in the odd-numbered years on the dates provided in RCW 29.13.020. However, after commissioners are elected at the next general election occurring in 1995 or 1997, regular elections in cities organized under a statutory commission form of government shall be held biennially at municipal general elections.

(2) The commissioners shall be nominated and elected at large. Their terms shall be for four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. However, at the next regular

election of a city organized under a statutory commission form of government, the terms of office of commissioners shall occur with the person who is elected as a commissioner receiving the least number of votes being elected to a two-year term of office and the other two persons who are elected being elected to four-year terms of office. Thereafter, commissioners shall be elected to four-year terms of office.

(3) If a vacancy occurs in the commission the remaining members shall appoint a person to fill it for the unexpired term.

Passed the House February 4, 1994.

Passed the Senate February 28, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 120

[House Bill 2382]

GAMBLING—COMMERCIAL STIMULANTS

AN ACT Relating to gambling; and amending RCW 9.46.0217 and 9.46.0281.

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

Sec. 1. RCW 9.46.0217 and 1987 c 4 s 6 are each amended to read as follows:

"Commercial stimulant," as used in this chapter, means an activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an (~~incidental~~) activity operated in connection with (~~and incidental to,~~) an established business, with the (~~primary~~) purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants.

Sec. 2. RCW 9.46.0281 and 1987 c 4 s 21 are each amended to read as follows:

"Social card game," as used in this chapter, means a card game, including but not limited to the game commonly known as "Mah-Jongg," which constitutes gambling and contains each of the following characteristics:

(1) There are two or more participants and each of them are players. However, no business with a public cardroom on its premises may have more than five separate tables at which card games are played;

(2) A player's success at winning money or other thing of value by overcoming chance is in the long run largely determined by the skill of the player;

(3) No organization, corporation or person collects or obtains or charges any percentage of or collects or obtains any portion of the money or thing of value

wagered or won by any of the players: PROVIDED, That this subsection shall not preclude a player from collecting or obtaining his or her winnings;

(4) No organization or corporation, or person collects or obtains any money or thing of value from, or charges or imposes any fee upon, any person which either enables him or her to play or results in or from his or her playing in excess of ~~((two))~~ three dollars per half hour of playing time by that person collected in advance: PROVIDED, That a fee may also be charged for entry into a tournament for prizes, which fee shall not exceed fifty dollars, including all separate fees which might be paid by a player for various phases or events of the tournament: PROVIDED FURTHER, That this subsection shall not apply to the membership fee in any bona fide charitable or nonprofit organization;

(5) The type of card game is one specifically approved by the commission pursuant to RCW 9.46.070; and

(6) The extent of wagers, money or other thing of value which may be wagered or contributed by any player does not exceed the amount or value specified by the commission pursuant to RCW 9.46.070.

Passed the House February 14, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 121

[House Bill 2392]

RESIDENTIAL BURGLARY

AN ACT Relating to residential burglary; amending RCW 10.95.020 and 10.99.020; and reenacting and amending RCW 9.41.010 and 9A.46.060.

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

Sec. 1. RCW 9.41.010 and 1992 c 205 s 117 and 1992 c 145 s 5 are each reenacted and amended to read as follows:

(1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter 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, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction or adjudication for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2)(a) of this section; and

(c) Any federal or out-of-state conviction or adjudication for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license.

Sec. 2. RCW 9A.46.060 and 1992 c 186 s 4 and 1992 c 145 s 12 are each reenacted and amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment in the second degree (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);

- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089); ~~((and))~~
- (33) Stalking (RCW 9A.46.110); and
- (34) Residential burglary (RCW 9A.52.025).

Sec. 3. RCW 10.95.020 and 1981 c 138 s 2 are each amended to read as follows:

A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board (~~of prison terms and paroles~~); or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(7) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime;

(8) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(9) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(10) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim.

Sec. 4. RCW 10.99.020 and 1991 c 301 s 3 are each amended to read as follows:

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

(1) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, and adult persons who are presently residing together or who have resided together in the past.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Reckless endangerment in the first degree (RCW 9A.36.045);
- (f) Reckless endangerment in the second degree (RCW 9A.36.050);
- (g) Coercion (RCW 9A.36.070);
- (h) Burglary in the first degree (RCW 9A.52.020);
- (i) Burglary in the second degree (RCW 9A.52.030);
- (j) Criminal trespass in the first degree (RCW 9A.52.070);
- (k) Criminal trespass in the second degree (RCW 9A.52.080);
- (l) Malicious mischief in the first degree (RCW 9A.48.070);
- (m) Malicious mischief in the second degree (RCW 9A.48.080);
- (n) Malicious mischief in the third degree (RCW 9A.48.090);
- (o) Kidnapping in the first degree (RCW 9A.40.020);
- (p) Kidnapping in the second degree (RCW 9A.40.030);
- (q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);

(s) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);

- (t) Rape in the first degree (RCW 9A.44.040); ~~(and)~~
- (u) Rape in the second degree (RCW 9A.44.050); and
- (v) Residential burglary (RCW 9A.52.025).

(3) "Victim" means a family or household member who has been subjected to domestic violence.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 122

[Substitute House Bill 2456]

RECLASSIFIED REFORESTATION LANDS

AN ACT Relating to reclassified reforestation lands; repealing RCW 84.28.005, 84.28.006, 84.28.010, 84.28.020, 84.28.030, 84.28.040, 84.28.050, 84.28.060, 84.28.063, 84.28.065, 84.28.070, 84.28.080, 84.28.090, 84.28.095, 84.28.100, 84.28.110, 84.28.120, 84.28.130, 84.28.140, 84.28.150, 84.28.160, 84.28.170, 84.28.200, 84.28.205, 84.28.210, 84.28.215, 84.33.055, 84.33.056, 84.33.057, 84.33.058, 84.33.059, 84.33.061, 84.33.062, 84.33.063, 84.33.064, 84.33.065, 84.33.066, 84.33.067, and 84.33.160; and providing an effective date.

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

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

- (1) RCW 84.28.005 and 1963 c 214 s 1 & 1961 c 15 s 84.28.005;
- (2) RCW 84.28.006 and 1975 1st ex.s. c 278 s 188 & 1963 c 214 s 2;
- (3) RCW 84.28.010 and 1963 c 214 s 3 & 1961 c 15 s 84.28.010;
- (4) RCW 84.28.020 and 1975 1st ex.s. c 278 s 189, 1963 c 214 s 4, & 1961 c 15 s 84.28.020;
- (5) RCW 84.28.030 and 1931 c 40 s 3;
- (6) RCW 84.28.040 and 1951 c 172 s 1 & 1931 c 40 s 3;
- (7) RCW 84.28.050 and 1975 1st ex.s. c 278 s 190, 1963 c 214 s 5, & 1961 c 15 s 84.28.050;
- (8) RCW 84.28.060 and 1975 1st ex.s. c 278 s 191, 1963 c 214 s 6, & 1961 c 15 s 84.28.060;
- (9) RCW 84.28.063 and 1975 1st ex.s. c 278 s 192 & 1963 c 214 s 7;
- (10) RCW 84.28.065 and 1975 1st ex.s. c 278 s 193 & 1963 c 214 s 8;
- (11) RCW 84.28.070 and 1931 c 40 s 4;
- (12) RCW 84.28.080 and 1988 c 202 s 68, 1971 c 81 s 152, 1963 c 214 s 9, & 1961 c 15 s 84.28.080;
- (13) RCW 84.28.090 and 1973 1st ex.s. c 195 s 89, 1971 ex.s. c 299 s 33, 1963 c 214 s 10, & 1961 c 15 s 84.28.090;
- (14) RCW 84.28.095 and 1961 c 15 s 84.28.095;
- (15) RCW 84.28.100 and 1963 c 214 s 11 & 1961 c 15 s 84.28.100;
- (16) RCW 84.28.110 and 1988 c 202 s 69, 1971 c 81 s 153, 1963 c 214 s 12, & 1961 c 15 s 84.28.110;
- (17) RCW 84.28.120 and 1939 c 206 s 33;
- (18) RCW 84.28.130 and 1961 c 15 s 84.28.130;
- (19) RCW 84.28.140 and 1963 c 214 s 13 & 1961 c 15 s 84.28.140;
- (20) RCW 84.28.150 and 1961 c 15 s 84.28.150;

- (21) RCW 84.28.160 and 1975 1st ex.s. c 278 s 194, 1963 c 214 s 14, & 1961 c 15 s 84.28.160;
- (22) RCW 84.28.170 and 1961 c 15 s 84.28.170;
- (23) RCW 84.28.200 and 1984 c 204 s 28;
- (24) RCW 84.28.205 and 1984 c 204 s 29;
- (25) RCW 84.28.210 and 1984 c 204 s 30;
- (26) RCW 84.28.215 and 1984 c 204 s 31;
- (27) RCW 84.33.055 and 1984 c 204 s 32;
- (28) RCW 84.33.056 and 1984 c 204 s 33;
- (29) RCW 84.33.057 and 1984 c 204 s 34;
- (30) RCW 84.33.058 and 1984 c 204 s 35;
- (31) RCW 84.33.059 and 1984 c 204 s 36;
- (32) RCW 84.33.061 and 1984 c 204 s 37;
- (33) RCW 84.33.062 and 1984 c 204 s 38;
- (34) RCW 84.33.063 and 1984 c 204 s 39;
- (35) RCW 84.33.064 and 1984 c 204 s 40;
- (36) RCW 84.33.065 and 1984 c 204 s 41;
- (37) RCW 84.33.066 and 1984 c 204 s 42;
- (38) RCW 84.33.067 and 1984 c 204 s 43; and
- (39) RCW 84.33.160 and 1990 c 33 s 600, 1983 c 3 s 225, & 1971 ex.s. c 294 s 16.

NEW SECTION. Sec. 2. This act shall take effect January 1, 1994.

Passed the House February 10, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 123

[House Bill 2477]

PROPERTY TAX—EXEMPT STATUS ANNUAL RENEWAL—BOARD OF EQUALIZATION PETITION DEADLINE

AN ACT Relating to property taxation; instituting annual renewal fees for organizations that receive a property tax exemption; providing a good cause exception to the filing deadline for petitions to boards of equalization; amending RCW 84.36.815, 84.36.825, 82.03.130, and 84.40.038; and creating a new section.

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

Sec. 1. RCW 84.36.815 and 1991 sp.s. c 29 s 6 are each amended to read as follows:

In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national governments, churches, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, private schools or colleges, and soil and water conservation districts shall file an initial application on or before March 31 with

the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

In order to requalify for exempt status, such applicants except nonprofit cemeteries shall file ~~((a))~~ an annual renewal ((application)) declaration on or before March 31 ~~((of the fourth))~~ each year ~~((following the date of such initial application and on or before March 31 of every fourth year thereafter. An applicant previously granted exemption shall annually file, on forms prescribed by the department,)).~~ The renewal declaration shall be on forms prescribed by the department of revenue and shall contain an affidavit certifying the exempt status of the real or personal property owned by the exempt organization. When an organization acquires real property qualified for exemption or converts real property to exempt status, such organization shall file an initial application for the property within sixty days following the acquisition or conversion. If the application is filed after the expiration of the sixty-day period a late filing penalty shall be imposed pursuant to RCW 84.36.825, as now or hereafter amended.

When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted.

Sec. 2. RCW 84.36.825 and 1977 ex.s. c 209 s 2 are each amended to read as follows:

An application fee of thirty-five dollars for each initial application and eight dollars and seventy-five cents for each annual renewal ((application)) declaration shall be required and shall be deposited within the general fund ~~((PROVIDED, That)).~~ The department of revenue may waive the application or declaration fee related to the property of any church or cemetery applying for exemption under the provisions of RCW 84.36.020 whose gross receipts related to the use of such property for exempt purposes did not exceed two thousand five hundred dollars during the calendar year preceding the application year. Applications made for assessment year 1974, if approved, shall be considered initial applications whether or not an exemption has previously been approved. A late filing penalty of ten dollars per month for each month an application or declaration is past due shall be required and shall be deposited in the general fund.

Sec. 3. RCW 82.03.130 and 1992 c 206 s 9 are each amended to read as follows:

The board shall have jurisdiction to decide the following types of appeals:

- (1) Appeals taken pursuant to RCW 82.03.190.
- (2) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(3) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(4) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 RCW and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(5) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(a) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(b) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(6) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210.

(7) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(8) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(9) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(10) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(11) Appeals pursuant to RCW 84.40.038(~~(2)~~)(3).

Sec. 4. RCW 84.40.038 and 1992 c 206 s 11 are each amended to read as follows:

(1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board on or before July 1st of the year of the assessment or within thirty days after the date an assessment or value change notice has been mailed, whichever is later.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows

good cause for the late filing. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;
(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen of the thirty days prior to the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service; or

(f) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization shall consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, shall be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board.

NEW SECTION. Sec. 5. This act shall be effective for taxes levied for collection in 1995 and thereafter.

Passed the House February 9, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 124

[Substitute House Bill 2479]

EXCISE AND PROPERTY TAX STATUTES—TECHNICAL CORRECTIONS

AN ACT Relating to general technical corrections of excise and property tax statutes; amending RCW 36.21.011, 82.04.270, 82.04.4282, 82.04.440, 82.08.026, 82.12.022, 82.12.023, 82.16.050, 84.12.200, 84.12.340, 84.16.100, 84.36.020, 84.36.264, 84.36.800, 84.36.810, 84.40.030, 84.40.080, 84.40.085, 84.40.170, 84.40.175, 84.40.230, 84.48.022, 84.48.026, 84.48.028, 84.48.032, 84.48.036, 84.48.050, 84.48.110, 84.48.120, 84.48.130, 84.48.140, 84.52.010, 84.52.018, 84.52.030, 84.60.050, 84.68.020, and 84.68.090; amending 1987 2nd ex.s. c 3 s 1 (uncodified); amending 1987 2nd ex.s. c 3 s 3 (uncodified); adding a new section to chapter 82.12 RCW; creating a new section; and repealing RCW 84.24.010, 84.24.020, 84.24.030, 84.24.040, 84.24.050, 84.24.060, and 84.24.070.

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

Sec. 1. RCW 36.21.011 and 1973 1st ex.s. c 11 s 1 are each amended to read as follows:

Any assessor who deems it necessary in order to ~~((enable him to))~~ complete the listing and the valuation of the property of ~~((his))~~ the county within the time prescribed by law, (1) may appoint one or more well qualified persons to act as ~~((his))~~ assistants or deputies who shall not engage in the private practice of appraising within the county in which he or she is employed without the written permission of the ~~((county))~~ assessor filed with the ~~((county))~~ auditor; and each such assistant or deputy so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors, and (2) may contract with any persons, firms or corporations, who are expert appraisers, to assist in the valuation of property.

To assist each assessor in obtaining adequate and well qualified assistants or deputies, the state department of personnel, after consultation with the Washington state association of county assessors, the Washington state association of counties, and the department of revenue, shall establish by July 1, 1967, and shall thereafter maintain, a classification and salary plan for those employees of an assessor who act as appraisers. The plan shall recommend the salary range and employment qualifications for each position encompassed by it, and shall, to the fullest extent practicable, conform to the classification plan, salary schedules and employment qualifications for state employees performing similar appraisal functions.

If an assessor intends to put such plan into effect in ~~((his))~~ the county, ~~((he))~~ the assessor shall inform the department of revenue and the ~~((board of county commissioners))~~ county legislative authority of this intent in writing. The department of revenue and the ~~((board))~~ county legislative authority may thereupon each designate a representative, and such representative or representatives as may be designated by the department of revenue or the ~~((board))~~ county legislative authority, or both, shall form with the assessor a committee. The committee so formed may, by unanimous vote only, determine the required number of certified appraiser positions and their salaries necessary to enable the ~~((county))~~ assessor to carry out the requirements relating to revaluation of property in chapter 84.41 RCW. The determination of the committee shall be certified to the ~~((board of county commissioners))~~ county legislative authority. The committee ~~((provided for herein))~~ may be formed only once in a period of four calendar years.

After such determination, the assessor may provide, in each of ~~((his))~~ the four next succeeding annual budget estimates, for as many positions as are established in such determination. Each ~~((board of county commissioners))~~ county legislative authority to which such a budget estimate is submitted shall allow sufficient funds for such positions. An employee may be appointed to a position covered by the plan only if the employee meets the employment qualifications established by the plan.

Sec. 2. RCW 82.04.270 and 1993 sp.s. c 25 s 105 are each amended to read as follows:

(1) Upon every person except persons taxable under subsections (1) or (8) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales(~~(--PROVIDED, That)~~). The tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying 0.484 percent of the value of the article so distributed as of the time of such distribution(~~(--PROVIDED, That persons engaged in the activities described in this subsection shall not be liable for the tax imposed if by proper invoice it can be shown that they have purchased such property from a wholesaler who has paid a business and occupation tax to the state upon the same articles. This proviso shall not apply to purchases from manufacturers as defined in RCW 82.04.110)~~). The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers(~~(--PROVIDED FURTHER, That)~~). Delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

Sec. 3. RCW 82.04.4282 and 1989 c 392 s 1 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax amounts derived from (~~((+))~~) bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This (~~(paragraph)~~) section shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are

graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction (~~(hereunder)~~) under this section.

Sec. 4. RCW 82.04.440 and 1987 2nd ex.s. c 3 s 2 are each amended to read as follows:

(1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250 (~~(or)~~), 82.04.270, or 82.04.260(7) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260 subsection (4) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(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.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and subsections (2), (3), (4), (5), and (7) of RCW 82.04.260, and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

Sec. 5. 1987 2nd ex.s. c 3 s 1 (uncodified) is amended to read as follows:

The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of ~~((this act))~~ chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, ~~((this act))~~ chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2 ~~((of this act))~~, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage.

Sec. 6. 1987 2nd ex.s. c 3 s 3 (uncodified) is amended to read as follows:

If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before August 11, 1987, in respect to RCW 82.04.440 as it existed before August 11, 1987, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2 ~~((of this act))~~, chapter 3, Laws of 1987 2nd ex. sess. and section 4 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits.

NEW SECTION. Sec. 7. Except as otherwise provided in section 6 of this act, section 4 of this act applies retrospectively to all tax reporting periods on or after June 23, 1987.

Sec. 8. RCW 82.08.026 and 1989 c 384 s 4 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of natural or manufactured gas that is taxable under RCW 82.12.022.

Sec. 9. RCW 82.12.022 and 1989 c 384 s 3 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020(~~((1)(b))~~). The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020(~~((1)(b))~~) with respect to the gas for which exemption is sought under this subsection.

~~((4))~~ (5) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020(~~((1)(b))~~) by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

~~((5))~~ (6) The use tax hereby imposed shall be paid by the consumer to the department.

~~((6))~~ (7) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

~~((7))~~ (8) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

Sec. 10. RCW 82.12.023 and 1989 c 384 s 5 are each amended to read as follows:

The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas that is taxable under RCW 82.12.022.

NEW SECTION. Sec. 11. A new section is added to chapter 82.12 RCW to read as follows:

The tax imposed by RCW 82.12.020 shall not apply in respect to the use of newspapers.

Sec. 12. RCW 82.16.050 and 1989 c 302 s 103 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: PROVIDED, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of credit losses actually sustained by taxpayers whose regular books of accounts are kept upon an accrual basis;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities

from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations: PROVIDED, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(9) Amounts derived from the production, sale, or transfer of electrical energy for resale or consumption outside the state (~~(if the production or generation of such energy is subject to tax under the manufacturing classification of chapter 82.04 RCW: PROVIDED, That the exemption set forth in RCW 82.04.310 shall not be applicable to the generation or production of the electrical energy so produced, sold, or transferred: AND PROVIDED FURTHER, That no credit has been claimed as an offset to taxes imposed under RCW 82.04.240));~~);

(10) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(11) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage.

Sec. 13. RCW 84.12.200 and 1987 c 153 s 1 are each amended to read as follows:

For the purposes of this chapter and unless otherwise required by the context:

(1) "Department" without other designation means the department of revenue of the state of Washington.

(2) "Railroad company" (~~shall~~) means and includes any person owning or operating a railroad, street railway, suburban railroad or interurban railroad in this state, whether its line of railroad be maintained at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported; or owning any station, depot, terminal or bridge for railroad purposes, as owner, lessee or otherwise.

(3) "Airplane company" (~~shall~~) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by aircraft, and engaged in the business of transporting persons and/or property for compensation, as owner, lessee or otherwise.

(4) "Electric light and power company" (~~shall~~) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation, transmission or distribution of electricity in this state, and engaged in the business of furnishing, transmitting, distributing or generating electrical energy for light, heat or power for compensation as owner, lessee or otherwise.

(5) "Telegraph company" ((shall)) means and includes any person owning, controlling, operating or managing any telegraph or cable line in this state, with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation, as owner, lessee or otherwise.

(6) "Telephone company" ((shall)) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communication by telephone in this state-owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communication for compensation as owner, lessee or otherwise.

(7) "Gas company" ((shall)) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the manufacture, transportation, or distribution of natural or manufactured gas in this state, and engaged for compensation in the business of furnishing gas for light, heat, power or other use, as owner, lessee or otherwise.

(8) "Pipe line company" ((shall)) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance or transportation of oils, natural or manufactured gas and/or other substances, except water, by pipe line in this state, and engaged in such business for compensation, as owner, lessee or otherwise.

~~(9) ("Water company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the supply, storage, distribution, diversion or carriage of water in this state, and engaged in the business of furnishing water for power, irrigation, manufacturing, domestic or other uses for compensation, as owner, lessee or otherwise.~~

~~(10) "Heating company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation and/or distribution of steam or hot water for heat, power, manufacturing or other purposes in this state, and engaged principally in business of furnishing, distributing, supplying or generating steam or hot water for heat, power, manufacturing or other purposes for compensation, as owner, lessee or otherwise.~~

~~(11) "Toll bridge company" shall mean and include any person owning, controlling, operating, or managing real or personal property, used for or in connection with or to facilitate the conveyance or transportation of persons and/or property over a bridge or bridge approach over any stream, river or body of water within, or partly within this state, and operated as a toll bridge for compensation, as owner, lessee, or otherwise.~~

(12)) "Steamboat company" ((shall)) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transporta-

tion of persons and/or property by vessel or ferry, upon the waters within this state, including the rivers and lakes and Puget Sound, between fixed termini or over a regular route, and engaged in the business of transporting persons and/or property for compensation as owner, lessee or otherwise.

~~((13))~~ (10) "Logging railroad company" (~~shall~~) means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of forest products by rail in this state, and engaged in the business of transporting forest products either as private carrier or carrier for hire.

~~((14))~~ (11) "Person" (~~shall~~) means and includes any individual, firm, copartnership, joint venture, association, corporation, trust, or any other group acting as a unit, whether mutual, cooperative or otherwise, and/or trustees or receivers appointed by any court.

~~((15))~~ (12) "Company" (~~shall~~) means and includes any railroad company, motor vehicle transportation company, airplane company, electric light and power company, telegraph company, telephone company, gas company, pipe line company, ~~((water company, heating company, toll bridge company,))~~ steamboat company, or logging railroad company; and the term "companies" (~~shall~~) means and includes all of such companies.

~~((16))~~ (13) "Operating property" (~~shall~~) means and includes all property, real and personal, owned by any company, or held by it as occupant, lessee or otherwise, including all franchises and lands, buildings, rights-of-way, water powers, motor vehicles, wagons, horses, aircraft, aerodromes, hangars, office furniture, water mains, gas mains, pipe lines, pumping stations, tanks, tank farms, holders, reservoirs, telephone lines, telegraph lines, transmission and distribution lines, dams, generating plants, poles, wires, cables, conduits, switch boards, devices, appliances, instruments, equipment, machinery, vessels, ferries, landing slips, docks, roadbeds, tracks, terminals, rolling stock equipment, appurtenances and all other property of a like or different kind, situate within the state of Washington, used by the company in the conduct of its operations; and, in case of personal property used partly within and partly without the state, it (~~shall~~) means and includes a proportion of such personal property to be determined as in this chapter provided.

~~((17))~~ (14) "Nonoperating property" (~~shall~~) means all physical property owned by any company, other than that used during the preceding calendar year in the conduct of its operations. It (~~shall~~) includes all lands and/or buildings wholly used by any person other than the owning company. In cases where lands and/or buildings are used partially by the owning company in the conduct of its operations and partially by any other person not assessable under this chapter under lease, sublease, or other form of tenancy, the operating and nonoperating property of the company whose property is assessed hereunder shall be determined by the department of revenue in such manner as will, in its judgment, secure the separate valuation of such operating and nonoperating property upon a fair and equitable basis. The amount of operating revenue

received from tenants or occupants of property of the owning company shall not be considered material in determining the classification of such property.

Sec. 14. RCW 84.12.340 and 1975 1st ex.s. c 278 s 169 are each amended to read as follows:

~~((At any time between the tenth and twenty-fifth days of July, inclusive, following the making of the assessment, every company shall be entitled on its own motion, presented to the department of revenue before the tenth day of July, to a hearing and to present evidence before the department of revenue,))~~
Following the making of an assessment, every company may present a motion for a hearing on the assessment with the department of revenue within the first ten working days of July. The hearing on this motion shall be held within ten working days following the hearing request period. During this hearing, the company may present evidence relating to the value of its operating property and to the value of other taxable property in the counties in which its operating property is situate. Upon request in writing for such hearing, the department shall appoint a time and place therefor, within the period aforesaid, the hearing to be conducted in such manner as the department shall direct. Hearings provided for in this section may be held at such times and in such places throughout the state as the department may deem proper or necessary, may be adjourned from time to time and from place to place and may be conducted by the department of revenue or by such member or members thereof as may be duly delegated to act for it. Testimony taken ~~((before less than the entire department of revenue))~~ at this hearing shall be ~~((reported and a transcript thereof filed with the department of revenue prior to its decision))~~ recorded.

Sec. 15. RCW 84.16.100 and 1975 1st ex.s. c 278 s 182 are each amended to read as follows:

Every company assessed under the provisions of this chapter shall be entitled on its own motion to a hearing and to present evidence before the department of revenue, ~~((at any time between the twentieth day of July and the fifteenth day of August))~~ within the ten working days following the hearing request period, relating to the value of the operating property of such company and to the value of the other taxable property in the counties in which the operating property of such company is situate. Upon request in writing for such hearing, which must be presented to the department of revenue ~~((on or before the twentieth day))~~ within the first ten working days of July following the making of the assessment, the department shall appoint a time and place therefor, within the respective periods aforesaid, the hearing to be conducted in such manner as the department shall direct. Hearings provided for in this section may be held at such times and in such places throughout the state as the department may deem proper or necessary and may be adjourned from time to time and from place to place.

Sec. 16. RCW 84.36.020 and 1975 1st ex.s. c 291 s 12 are each amended to read as follows:

The following real and personal property shall be exempt from taxation:

All lands, ~~((and))~~ buildings, and personal property required for necessary administration and maintenance, used, or to the extent used, exclusively for public burying grounds or cemeteries without discrimination as to race, color, national origin or ancestry;

All churches, personal property, and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or shall be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. The area exempted shall in any case include all ground covered by the church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property and the structures and ground necessary for street access, parking, light, and ventilation, but the area of unoccupied ground exempted in such cases, in connection with church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property, shall not exceed the equivalent of one hundred twenty by one hundred twenty feet except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements. The parsonage and convent need not be on land contiguous to the church property. To be exempt the property must be wholly used for church purposes: PROVIDED, That the loan or rental of property otherwise exempt under this paragraph to a nonprofit organization, association, or corporation, or school for use for an eleemosynary activity shall not nullify the exemption provided in this paragraph if the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property.

Sec. 17. RCW 84.36.264 and 1973 c 112 s 3 are each amended to read as follows:

Owners of property desiring tax exempt status pursuant to the provisions of RCW 84.36.260(~~(, as now or hereafter amended,)~~) shall make an application ~~((therefor with the assessor of the county wherein such property is located))~~ for the exemption with the department. ~~((Prior to approval the assessor shall forward a copy of the initial application to the department of revenue and a copy of the option))~~ If such property qualifies pursuant to RCW 84.36.260(2), ((as now or hereafter amended)) a copy of the option shall also be submitted to the department. Such option shall clearly state the purchase price pursuant to the option or the appraisal value as determined by the department of revenue.

Sec. 18. RCW 84.36.800 and 1993 c 79 s 2 are each amended to read as follows:

As used in RCW 84.36.020, 84.36.030, 84.36.550, 84.36.037, 84.36.040, 84.36.041, 84.36.050, 84.36.060, and 84.36.800 through 84.36.865:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administra-

tive, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of ~~((clergymen))~~ clergy or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a ~~((clergyman who is))~~ member of the clergy who has been designated for a particular congregation and who holds regular services therefor.

Sec. 19. RCW 84.36.810 and 1993 c 79 s 4 are each amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.550, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.050, and 84.36.060, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes~~((+PROVIDED, That))~~. Where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, or 84.36.060;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041~~((2))~~(3), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status or the conversion of a partial exemption to taxable status under RCW 84.36.041~~((7))~~ (8).

Sec. 20. RCW 84.40.030 and 1993 c 436 s 1 are each amended to read as follows:

All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid. ~~((Notwithstanding any other provisions of this section or of any other statute, when the value of any taxable leasehold estate created prior to January 1, 1971 is being determined for assessment years prior to the assessment year 1973, there shall be deducted from what would otherwise be the value thereof the present worth of the rentals and other consideration which may be required of the lessee by the lessor for the unexpired term thereof: PROVIDED, That the foregoing provisions of this sentence shall not apply to any extension or renewal, made after December 31, 1970 of the term of any such estate, or to any such estate after the date, if any, provided for in the agreement for rental renegotiation.))~~

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. The appraisal shall also take into account~~((:))~~ (a) in the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1), consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or

capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the value of the land, exclusive of structures thereon shall be determined; also the value of structures thereon, but the valuation shall not exceed the value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

Sec. 21. RCW 84.40.080 and 1973 2nd ex.s. c 8 s 1 are each amended to read as follows:

The assessor, upon ~~((his))~~ the assessor's own motion, or upon the application of any taxpayer, shall enter in the detail and assessment list of the current year any property shown to have been omitted from the assessment list of any preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessor shall determine from the preceding year, and such valuation shall be stated in a separate line from the valuation of the current year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section ~~((: PROVIDED, That))~~. No such assessment shall be made in any case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest ~~((: AND PROVIDED FURTHER, That))~~. In the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor.

Sec. 22. RCW 84.40.085 and 1973 2nd ex.s. c 8 s 2 are each amended to read as follows:

No omitted property or omitted value assessment shall be made for any period more than three years preceding the year in which the omission is discovered. The assessor, upon discovery of such omission, shall forward a copy of the amended personal property affidavit along with a letter of particulars informing the taxpayer of the findings and of ~~((his))~~ the taxpayer's right of appeal to the county board of equalization. Upon request of either the taxpayer or the assessor, the county board of equalization may be reconvened to act on ~~((subject omits))~~ the omitted property or omitted value assessments.

Sec. 23. RCW 84.40.170 and 1961 c 15 s 84.40.170 are each amended to read as follows:

In all cases of irregular subdivided tracts or lots of land other than any regular government subdivision the ((~~county~~)) assessor shall outline a plat of such tracts or lots and notify the owner or owners thereof with a request to have the same surveyed by the county engineer, and cause the same to be platted into numbered (or lettered) lots or tracts(~~((~~PROVIDED, HOWEVER, That where~~))~~), If any county has in its possession the correct field notes of any such tract or lot of land a new survey shall not be necessary(~~((~~but~~))~~) and such tracts may be mapped from such field notes. In case the owner of such tracts or lots neglects or refuses to have the same surveyed or platted, the ((~~county~~)) assessor shall notify the ((~~board of county commissioners~~)) county legislative authority in and for the county, who may order and direct the county engineer to make the proper survey and plat of the tracts and lots. A plat shall be made on which said tracts or lots of land shall be accurately described by lines, and numbered (or lettered), which numbers (or letters) together with number of the section, township and range shall be distinctly marked on such plat, and the field notes of all such tracts or lots of land shall describe each tract or lot according to the survey, and such tract or lot shall be numbered (or lettered) to correspond with its number (or letter) on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field notes and name of plat, shall have been approved by the board of county commissioners, the plat and field notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number (or letter), section, township and range, shall be a sufficient and legal description for revenue and all other purposes.

Sec. 24. RCW 84.40.175 and 1986 c 285 s 3 are each amended to read as follows:

At the time of making the assessment of real property, the assessor shall enter each description of property exempt under the provisions of ((~~RCW 84.36.005 through 84.36.060~~)) chapter 84.36 RCW, and value and list the same in the manner and subject to the same rule as ((~~he~~)) the assessor is required to assess all other property, designating in each case to whom such property belongs(~~((~~and for what purpose used, to entitle it to exemption, and he shall require from every person claiming such exemption proof of the right to such exemption. PROVIDED, That~~))~~), However, with respect to publicly owned property exempt from taxation under provisions of RCW 84.36.010, the assessor shall value only such property as is leased to or occupied by a private person under an agreement allowing such person to occupy or use such property for a private purpose when a request for such valuation is received from the department of revenue or the lessee of such property for use in determining the taxable rent as provided for in chapter 82.29A RCW: PROVIDED FURTHER, That this section shall not prohibit any assessor from valuing any public property leased to or occupied by a private person for private purposes.

Sec. 25. RCW 84.40.230 and 1961 c 15 s 84.40.230 are each amended to read as follows:

When any real property is sold on contract by the United States of America, the state, or any county or municipality, and ~~((sueh))~~ the contract expresses or implies that the vendee is entitled to the possession, use, benefits and profits thereof and therefrom so long as ~~((he))~~ the vendee complies with the terms of ~~((sueh))~~ the contract, it shall be deemed that the vendor retains title merely as security for the fulfillment of the contract, and ~~((sueh))~~ the property shall be assessed and taxed in the same manner as other similar property in private ownership is taxed, and the tax roll shall contain, opposite the description of the property so assessed the following notation: "Subject to title remaining in the vendor" or other notation of similar significance. No foreclosure for delinquent taxes nor any deed issued pursuant thereto shall extinguish or otherwise affect the title of the vendor. In any case under former law where the contract and not the property was taxed no deed of the property described in such contract shall ever be executed and delivered by the state or any county or municipality until all taxes assessed against such contract and local assessments assessed against the land described thereon are fully paid.

Sec. 26. RCW 84.48.022 and 1970 ex.s. c 55 s 5 are each amended to read as follows:

All meetings of the board of equalization shall be held at the county courthouse, or other suitable place within the county, and the ~~((board of county commissioners))~~ county legislative authority shall make provision for a suitable meeting place.

Sec. 27. RCW 84.48.026 and 1970 ex.s. c 55 s 6 are each amended to read as follows:

The terms of each appointed member of the board shall be for three years or until their successors are appointed~~((—PROVIDED, HOWEVER,))~~. Each appointed member may be removed by a majority vote of the ~~((county commissioners or other))~~ county legislative ~~((body))~~ authority.

Sec. 28. RCW 84.48.028 and 1970 ex.s. c 55 s 7 are each amended to read as follows:

The board may appoint a clerk of the board and any assistants the board might need, all to serve at the pleasure of the members of the board, and the clerk or ~~((his))~~ assistant~~((s))~~ shall attend all sessions thereof, and shall keep the record. Neither the assessor nor any of ~~((his))~~ the assessor's staff may serve as clerk.

Sec. 29. RCW 84.48.032 and 1970 ex.s. c 55 s 8 are each amended to read as follows:

The board may hire one or more appraisers accredited by the department of revenue or certified ~~((as such))~~ by the Washington state department of ~~((personnel))~~ licensing, society of real estate appraisers, American institute of real estate appraisers, or international association of assessing officers, and not otherwise

employed by the county, and other necessary personnel for the purpose of aiding the board and carrying out its functions and duties. In addition, the boards of the various counties may make reciprocal arrangements for the exchange of the appraisers with other counties. Such appraisers need not be residents of the county.

Sec. 30. RCW 84.48.036 and 1970 ex.s. c 55 s 9 are each amended to read as follows:

The county (~~(commissioners)~~) legislative authority may provide an adequate annual budget and funds for operation and needs of the board of equalization, including, but not limited to the costs and expenses of the board, such as the meeting place, the necessary equipment and facilities, materials, the salaries of the clerk of the board and (~~(his)~~) the clerk's assistants, the expenses of the members of the board during the sessions, travel, in-service training, and payment of salaries of all such employees hired by the board, to facilitate its work.

Sec. 31. RCW 84.48.050 and 1961 c 15 s 84.48.050 are each amended to read as follows:

The county assessor shall, on or before the fifteenth day of January in each year, make out and transmit to the state auditor, in such form as may be prescribed, a complete abstract of the tax rolls of the county, showing the number of acres of land assessed, the value of such land, including the structures thereon; the value of town and city lots, including structures; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized and the total amount of taxes levied in the county for state, county, city and other taxing district purposes, for that year. Should the assessor of any county fail to transmit to the (~~(state board of equalization)~~) department of revenue the abstract provided for in RCW 84.48.010 (~~(by the time the state board of equalization convenes)~~), and if, by reason of such failure to transmit such abstract, any county shall fail to collect and pay to the state its due proportion of the state tax for any year, the (~~(state board of equalization)~~) department of revenue shall(~~(, at its next annual session,)~~) ascertain what amount of state tax said county has failed to collect, and certify the same to the state auditor, who shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said sum shall be due and payable immediately by warrant in favor of the state on the current expense fund of said county.

Sec. 32. RCW 84.48.110 and 1987 c 168 s 1 are each amended to read as follows:

(~~(Within three days after the record of the proceedings of the state board of equalization is certified by the director of the department)~~) After certifying the record of the proceedings of the department in accordance with RCW 84.48.080, the department shall transmit to each county assessor a copy of the record of the proceedings of the (~~(board)~~) department, specifying the amount to be levied and

collected (~~(on said assessment books)~~) for state purposes for such year, and in addition thereto it shall certify to each county assessor the amount due to each state fund and unpaid from such county for the fifth preceding year, and such delinquent state taxes shall be added to the amount levied for the current year. The department shall close the account of each county for the fifth preceding year and charge the amount of such delinquency to the tax levy of the current year. These delinquent taxes shall not be subject to chapter 84.55 RCW. All taxes collected on and after the first day of July last preceding such certificate, on account of delinquent state taxes for the fifth preceding year shall belong to the county and by the county treasurer be credited to the current expense fund of the county in which collected.

Sec. 33. RCW 84.48.120 and 1987 c 168 s 2 are each amended to read as follows:

It shall be the duty of the (~~(county)~~) assessor of each county, when (~~(he)~~) the assessor shall have received from the state department of revenue the assessed valuation of the property of railroad and other companies assessed by the department of revenue and apportioned to the county, and placed the same on the tax rolls, and received the report of the department of revenue of the amount of taxes levied for state purposes, to compute the required percent on the assessed value of property in the county, and such state taxes shall be extended on the tax rolls (~~(in the proper column: PROVIDED, That)~~). The rates so computed shall not be such as to raise a surplus of more than five percent over the total amount required by the (~~(state board of equalization: PROVIDED FURTHER, That)~~) department. Any surplus raised shall be remitted to the state in accordance with RCW 84.56.280.

Sec. 34. RCW 84.48.130 and 1975 1st ex.s. c 278 s 207 are each amended to read as follows:

It shall be the duty of the (~~(county)~~) assessor of each county, when (~~(he)~~) the assessor shall have received from the state department of revenue the certificate of the assessed valuation of the property of railroad and/or other companies assessed by the department of revenue and apportioned to the county, and shall have distributed the value so certified (~~(to him)~~), to the several taxing districts in (~~(his)~~) the county entitled to a proportionate value thereof, and placed the same upon the tax rolls of the county, to certify to the (~~(board of county commissioners)~~) county legislative authority and to the officers authorized by law to estimate expenditures and/or levy taxes for any taxing district coextensive with the county, the total assessed value of property in the county as shown by the completed tax rolls, and to certify to the officers authorized by law to estimate expenditures and/or levy taxes for each taxing district in the county not coextensive with the county, the total assessed value of the property in such taxing district.

Sec. 35. RCW 84.48.140 and 1971 ex.s. c 288 s 11 are each amended to read as follows:

The county (~~(commissioners or governing board)~~) legislative authority of any county may designate one or more persons to act as a property tax advisor to any person liable for payment of property taxes in the county. A person designated as a property tax advisor shall not be an employee of the assessor's office or have been associated in any way with the determination of any valuation of property for taxation purposes that may be the subject of an appeal. A person designated as a property tax advisor may be compensated on a fee basis or as an employee by the county from any funds available to the county for use in property evaluation including funds available from the state for use in the property tax revaluation program.

The property tax advisor shall perform such duties as may be set forth by resolution of the county (~~(commissioners or other governing)~~) legislative authority.

If any (~~board of county commissioners~~) county legislative authority elects to designate a property tax advisor, (~~they~~) it shall publicize the services available.

Sec. 36. RCW 84.52.010 and 1993 c 337 s 4 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, as now or hereafter amended, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law (~~(, subject to subsection (2)(c) of this section)~~); however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010; however, if as a result of the levies imposed under RCW 84.52.069, 84.34.230, and 84.52.105, the combined rates of regular property tax levies exceed one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230 and 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value,

shall be reduced on a pro rata basis or eliminated until the combined rates of regular property tax levies no longer exceed one percent of the true and fair value of any property; and

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

Sec. 37. RCW 84.52.018 and 1989 c 378 s 15 are each amended to read as follows:

Whenever any property value or claim for exemption or cancellation of a property assessment is appealed to the state board of tax appeals or court of competent jurisdiction and the dollar difference between the total value asserted by the taxpayer and the total value asserted by the opposing party exceeds one-fourth of one percent of the total assessed value of property in the county, the assessor shall use only that portion of the total value which is not in controversy for purposes of computing the levy rates and extending the tax on the tax roll in accordance with this chapter, unless the state board of tax appeals has issued its determination at the time of extending the tax.

When the state board of tax appeals or court of competent jurisdiction makes its final determination, the proper amount of tax shall be extended and collected for each taxing district if this has not already been done. The amount of tax collected and extended shall include interest at the rate of nine percent per year

on the amount of the board's final determination minus the amount not in controversy. The interest shall accrue from the date the taxes on the amount not in controversy (~~was~~) were first due and payable. Any amount extended in excess of that permitted by chapter 84.55 RCW shall be held in abeyance and used to reduce the levy rates of the next succeeding levy.

Sec. 38. RCW 84.52.030 and 1961 c 15 s 84.52.030 are each amended to read as follows:

For the purpose of raising revenue for state, county and other taxing district purposes, the (~~board of county commissioners~~) county legislative authority of each county at its October session, and all other officials or boards authorized by law to levy taxes for taxing district purposes, shall levy taxes on all the taxable property in the county or district, as the case may be, sufficient for such purposes, and within the limitations permitted by law.

Sec. 39. RCW 84.60.050 and 1971 ex.s. c 260 s 2 are each amended to read as follows:

(1) When real property is acquired by purchase or condemnation by the state of Washington, any county or municipal corporation or is placed under a recorded agreement for immediate possession and use or an order of immediate possession and use pursuant to RCW 8.04.090, such property shall continue to be subject to the tax lien for the years prior to the year in which the property is so acquired or placed under such agreement or order, of any tax levied by the state, county, municipal corporation or other tax levying public body, except as is otherwise provided in RCW 84.60.070.

(2) The lien for taxes applicable to the real property being acquired or placed under immediate possession and use for the year in which such real property is so acquired or placed under immediate possession and use shall be for only the pro rata portion of taxes allocable to that portion of the year prior to the date of execution of the instrument vesting title, date of recording such agreement of immediate possession and use, date of such order of immediate possession and use, or date of judgment. No taxes levied or tax lien on such property allocable to a period subsequent to the dates identified in this subsection shall be valid and any such taxes levied shall be canceled as provided in RCW (~~84.56.400~~) 84.48.065. In the event the owner has paid taxes allocable to that portion of the year subsequent to the dates identified in this subsection he or she shall be entitled to a pro rata refund of the amount paid on the property so acquired or placed under a recorded agreement or an order of immediate possession and use. If the dates identified in this subsection precede February 15th of the year in which such taxes become payable, no lien for such taxes shall be valid and any such taxes levied but not payable shall be canceled as provided in RCW (~~84.56.400~~) 84.48.065.

Sec. 40. RCW 84.68.020 and 1961 c 15 s 84.68.020 are each amended to read as follows:

In all cases of the levy of taxes for public revenue which are deemed unlawful or excessive by the person, firm or corporation whose property is taxed, or from whom such tax is demanded or enforced, such person, firm or corporation may pay such tax or any part thereof deemed unlawful, under written protest setting forth all of the grounds upon which such tax is claimed to be unlawful or excessive; and thereupon the person, firm or corporation so paying, or (~~his or its~~) their legal representatives or assigns, may bring an action in the superior court or in any federal court of competent jurisdiction against the state, county or municipality by whose officers the same was collected, to recover such tax, or any portion thereof, so paid under protest: PROVIDED, That RCW 84.68.010 through 84.68.070 shall not be deemed to enlarge the grounds upon which taxes may now be recovered: AND PROVIDED FURTHER, That no claim need be presented to the state or county or municipality, or any of their respective officers, for the return of such protested tax as a condition precedent to the institution of such action.

Sec. 41. RCW 84.68.090 and 1961 c 15 s 84.68.090 are each amended to read as follows:

In all actions for the recovery of lands or other property sold for taxes, the complainant must state and set forth specially in (~~his~~) the complaint the tax that is justly due, with penalties, interest and costs, that the taxes for that and previous years have been paid; and when the action is against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, (~~his~~) the purchaser's assignees or grantees have been fully paid or tendered, and payment refused.

NEW SECTION. **Sec. 42.** The following acts or parts of acts are each repealed:

(1) RCW 84.24.010 and 1975 1st ex.s. c 278 s 184 & 1961 c 15 s 84.24.010;

(2) RCW 84.24.020 and 1961 c 15 s 84.24.020;

(3) RCW 84.24.030 and 1985 c 469 s 64, 1975 1st ex.s. c 278 s 185, & 1961 c 15 s 84.24.030;

(4) RCW 84.24.040 and 1975 1st ex.s. c 278 s 186 & 1961 c 15 s 84.24.040;

(5) RCW 84.24.050 and 1975 1st ex.s. c 278 s 187 & 1961 c 15 s 84.24.050;

(6) RCW 84.24.060 and 1961 c 15 s 84.24.060; and

(7) RCW 84.24.070 and 1989 c 378 s 27 & 1961 c 15 s 84.24.070.

Passed the House February 9, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 125

[House Bill 2482]

MANUFACTURING, RESEARCH, AND DEVELOPMENT PROJECTS—TAX
DEFERRAL ELIGIBILITY EXTENSION

AN ACT Relating to extending dates by which construction must be commenced, or machinery and equipment must be acquired, in order to qualify as an eligible investment project for tax deferrals for manufacturing, research, and development projects; and amending RCW 82.61.010.

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

Sec. 1. RCW 82.61.010 and 1988 c 41 s 1 are each amended to read as follows:

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Person" has the meaning given in RCW 82.04.030.

(3) "Department" means the department of revenue.

(4) "Eligible investment project" means:

(a) Construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, ~~((1994))~~ 1998; or

(b) Acquisition prior to December 31, ~~((1994))~~ 1998, of new machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure(~~(- PROVIDED, That)~~). The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(c) Acquisition of all new or used machinery, equipment, or other personal property for use in the production or casting of aluminum at an aluminum smelter or at facilities related to an aluminum smelter, if the plant was in operation prior to 1975 and has ceased operations or is in imminent danger of ceasing operations for economic reasons, as determined by the department, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represented employees of the plant pursuant to a collective bargaining agreement that was in effect either immediately prior to the time the plant ceased operations or during the period when the plant was in imminent danger of ceasing operations, on the proposed operation of the plant and on the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter; or

(d) Modernization projects involving construction, acquisition, or upgrading of equipment or machinery, including services and labor, which are commenced after May 19, 1987, and are intended to increase the operating efficiency of existing plants which are either aluminum smelters or aluminum rolling mills or

of facilities related to such plants, if the plant was in operation prior to 1975, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represents employees of the plant on the proposed operation of the plant and the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter.

(5) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and includes the production or fabrication of specially made or custom-made articles.

(6) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(7) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(8) "Machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery. For purposes of this chapter, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment may be treated as new equipment and machinery if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.

(10) "Recipient" means a person receiving a tax deferral under this chapter.

(11) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(12) "Operationally complete" means constructed or improved to the point of being functionally useable for the intended purpose.

(13) "Initiation of construction" means that date upon which on-site construction commences.

Passed the House February 9, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 126

[House Bill 2486]

SUNSET PROVISIONS—REPEAL AND EXTENSIONS

AN ACT Relating to sunset provisions; amending RCW 43.131.381, 43.131.382, and 28B.102.900; and repealing RCW 43.131.215, 43.131.216, 43.131.327, 43.131.328, 43.131.347, 43.131.348, 43.131.365, 43.131.366, 43.131.371, and 43.131.372.

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

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

- (1) RCW 43.131.215 and 1988 c 288 s 1, 1986 c 270 s 1, 1983 c 119 s 3, & 1979 c 99 s 34;
- (2) RCW 43.131.216 and 1988 c 288 s 2, 1986 c 270 s 2, 1983 c 119 s 4, & 1979 c 99 s 76;
- (3) RCW 43.131.327 and 1988 c 288 s 9 & 1985 c 185 s 31;
- (4) RCW 43.131.328 and 1988 c 288 s 10 & 1985 c 185 s 32;
- (5) RCW 43.131.347 and 1987 c 328 s 15;
- (6) RCW 43.131.348 and 1987 c 328 s 16;
- (7) RCW 43.131.365 and 1988 c 186 s 14;
- (8) RCW 43.131.366 and 1988 c 186 s 15;
- (9) RCW 43.131.371 and 1990 c 297 s 20; and
- (10) RCW 43.131.372 and 1990 c 297 s 21.

Sec. 2. RCW 43.131.381 and 1993 c 512 s 35 are each amended to read as follows:

The linked deposit program shall be terminated on June 30, ~~((1996))~~ 2000, as provided in RCW 43.131.382.

Sec. 3. RCW 43.131.382 and 1993 c 512 s 36 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ~~((1997))~~ 2001:

- (1) RCW 43.86A.060 and 1993 c 512 s 30;
- (2) RCW 43.63A.690 and 1993 c 512 s 31; and
- (3) RCW 43.86A.070 and 1993 c 512 s 34.

Sec. 4. RCW 28B.102.900 and 1987 c 437 s 9 are each amended to read as follows:

No conditional scholarships shall be granted after June 30, ~~((1994, until the program is reviewed by the legislative budget committee and is reenacted by the legislature))~~ 1995.

Passed the House March 9, 1994.
 Passed the Senate March 9, 1994.
 Approved by the Governor March 28, 1994.
 Filed in Office of Secretary of State March 28, 1994.

CHAPTER 127

[Engrossed House Bill 2487]

**SUPPORT REGISTRY—STANDARD INDUSTRIAL CLASSIFICATION
 CODES—INFORMATION CONFIDENTIALITY**

AN ACT Relating to employers in the standard industrial classification; and amending RCW 26.23.040.

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

Sec. 1. RCW 26.23.040 and 1993 c 480 s 1 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, all employers doing business in the state of Washington, and to whom the department of employment security has assigned the standard industrial classification sic codes listed in subsection (2) of this section, shall report to the Washington state support registry:

- (a) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and
- (b) The rehiring or return to work of any employee who was laid off, furloughed, separated, granted a leave without pay, or terminated from employment.

(2) Employers in the standard industrial classifications that shall report to the Washington state support registry include:

- (a) Construction industry sic codes: 15, general building; ~~((and))~~ 16, ~~((other than building))~~ heavy construction; and 17, special trades;
- (b) Manufacturing industry sic code 37, transportation equipment;
- (c) ~~((Wholesale trade industry))~~ Business services sic codes: 73, ~~((business services))~~ except sic code ~~((7362))~~ 7363 (temporary help supply services); and health services sic code 80~~((health services))~~.

(3) Employers are not required to report the hiring of any person who:

- (a) Will be employed for less than one months duration;
- (b) Will be employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or
- (c) Will have gross earnings less than three hundred dollars in every month.

The secretary of the department of social and health services may adopt rules to establish additional exemptions if needed to reduce unnecessary or burdensome reporting.

(4) Employers may report by mailing the employee's copy of the W-4 form, or other means authorized by the registry which will result in timely reporting.

(5) Employers shall submit reports within thirty-five days of the hiring, rehiring, or return to work of the employee. The report shall contain:

(a) The employee's name, address, social security number, and date of birth; and

(b) The employer's name, address, and employment security reference number or unified business identifier number.

(6) An employer who fails to report as required under this section shall be given a written warning for the first violation and shall be subject to a civil penalty of up to two hundred dollars per month for each subsequent violation after the warning has been given. All violations within a single month shall be considered a single violation for purposes of assessing the penalty. The penalty may be imposed and collected by the office of support enforcement under RCW 74.20A.270.

(7) The registry shall retain the information for a particular employee only if the registry is responsible for establishing, enforcing, or collecting a support obligation or debt of the employee. If the employee does not owe such an obligation or a debt, the registry shall not create a record regarding the employee and the information contained in the notice shall be promptly destroyed. Prior to the destruction of the notice, the department of social and health services shall make the information contained in the notice available to other state agencies, based upon the written request of an agency's director or chief executive, specifically for comparison with records or information possessed by the requesting agency to detect improper or fraudulent claims. If, after comparison, no such situation is found or reasonably suspected to exist, the information shall be promptly destroyed by the requesting agency. Requesting agencies that obtain information from the department of social and health services under this section shall maintain the confidentiality of the information received, except as necessary to implement the agencies' responsibilities.

Passed the House March 4, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 128

[Engrossed House Bill 2523]

CUSTOM SLAUGHTERING—POULTRY PRODUCTS—VIOLATIONS

AN ACT Relating to violations concerning custom slaughtering and poultry products; amending RCW 16.49.444, 16.49.510, and 16.74.650; and prescribing penalties.

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

Sec. 1. RCW 16.49.444 and 1985 c 415 s 12 are each amended to read as follows:

The director of agriculture may, subsequent to a hearing under chapter 34.05 RCW, deny, suspend, establish conditions of probation for a designated period

of time, or revoke any license required under this chapter if it is determined that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules ~~((and regulations))~~ adopted hereunder, or any lawful order of the department of agriculture;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested under this chapter; or

(3) Refused the director of agriculture access to any facilities or parts of the facilities subject to this chapter.

Sec. 2. RCW 16.49.510 and 1985 c 415 s 6 are each amended to read as follows:

If the director finds that a person has committed a violation of any provision of this chapter or rules adopted under this chapter, the director may impose upon and collect from the violator, a civil penalty not exceeding one thousand dollars per violation per day. Each violation is a separate and distinct offense.

The violation of any provision of this chapter ~~((and/or))~~ or rules ~~((and regulations))~~ adopted hereunder shall constitute a gross misdemeanor.

Both a civil penalty and a criminal penalty may not be imposed for the same violation.

Sec. 3. RCW 16.74.650 and 1969 ex.s. c 146 s 61 are each amended to read as follows:

If the director finds that a person has committed a violation of the provisions of this chapter or rules adopted under this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation is a separate and distinct offense.

Any person violating any provisions of this chapter or any rules ~~((or regulations))~~ adopted hereunder shall be ~~((guilty of a misdemeanor and))~~ guilty of a gross misdemeanor ~~((for any second and subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense)).~~

Both a civil penalty and a criminal penalty may not be imposed for the same violation.

Passed the House February 9, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 129

[Substitute House Bill 2540]

SEX OFFENDERS—RELEASE NOTICE REQUIREMENTS

AN ACT Relating to the release of information concerning sex offenders; amending RCW 4.24.550, 10.77.163, 10.77.205, 13.40.215, 43.43.745, 71.05.325, and 71.05.425; reenacting and amending RCW 9.94A.155; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children. Therefore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible.

Sec. 2. RCW 4.24.550 and 1990 c 3 s 117 are each amended to read as follows:

(1) Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(2) Local law enforcement agencies and officials who decide to release information pursuant to this section shall make a good faith effort to notify the public and residents at least fourteen days before the sex offender is released. If a change occurs in the release plan, this notification provision will not require an extension of the release date. The department of corrections and the department of social and health services shall provide local law enforcement officials with all relevant information on sex offenders about to be released or placed into the community in a timely manner.

(3) An elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The authorization and immunity in this section applies to information regarding: (a) A person convicted of, or juvenile found to have committed, a sex offense as defined by RCW 9.94A.030; (b) a person found not guilty of a sex offense by reason of insanity under chapter 10.77 RCW; (c) a person found incompetent to stand trial for a sex offense and subsequently committed under chapter 71.05 or 71.34 RCW; (d) a person committed as a sexual psychopath under chapter 71.06 RCW; or (e) a person committed as a sexually violent predator under chapter

71.09 RCW. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

~~((3))~~ (4) Except as otherwise provided by statute, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information as provided in subsections (2) and (3) of this section.

~~((4))~~ (5) Nothing in this section implies that information regarding persons designated in subsections (2) and (3) of this section is confidential except as otherwise provided by statute.

Sec. 3. RCW 9.94A.155 and 1992 c 186 s 7 and 1992 c 45 s 2 are each reenacted and amended to read as follows:

(1) At the earliest possible date, and in no event later than ~~((ten))~~ thirty 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, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(c) 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.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, 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 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.

~~((4))~~ (5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

~~((5))~~ (6) 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.

~~((6))~~ (7) 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.

~~((7))~~ (8) 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. 4. RCW 10.77.163 and 1990 c 3 s 106 are each amended to read as follows:

(1) Before a person committed under this chapter is permitted temporarily to leave a treatment facility for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least ~~((thirty))~~ forty-five days before the anticipated release and shall describe the conditions under which the release is to occur.

(2) In addition to the notice required by subsection (1) of this section, the superintendent of each state institution designated for the custody, care, and treatment of persons committed under this chapter shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.090 or 10.77.110. Notification shall be made at least ~~((forty-eight hours))~~ thirty days before the furlough, and shall include the name of the person, the place to which the person has

permission to go, and the dates and times during which the person will be on furlough.

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order to prevent the release of the person on the grounds that the person is dangerous to self or others.

(4) The notice requirements contained in this section shall not apply to emergency medical furloughs.

(5) The existence of the notice requirements contained in this section shall not require any extension of the release date in the event the release plan changes after notification.

(6) The notice provisions of this section are in addition to those provided in RCW 10.77.205.

Sec. 5. RCW 10.77.205 and 1992 c 186 s 8 are each amended to read as follows:

(1)(a) At the earliest possible date, and in no event later than ~~((ten))~~ thirty days before conditional release, final discharge, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, final discharge, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The thirty-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Next of kin" means a person's spouse, parents, siblings, and children;
- (d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;
- (e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Sec. 6. RCW 13.40.215 and 1993 c 27 s 1 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ~~((ten))~~ thirty days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense, a sex offense, or stalking, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside; and

(ii) The sheriff of the county in which the juvenile will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2)(a) If a juvenile found to have committed a violent offense, a sex offense, or stalking escapes from a facility of the department, the secretary 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 juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary 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.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent offense, a sex offense, or stalking, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Stalking" means the crime of stalking as defined in RCW 9A.46.110;
- (d) "Next of kin" means a person's spouse, parents, siblings, and children.

Sec. 7. RCW 43.43.745 and 1993 c 24 s 1 are each amended to read as follows:

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, (~~forty-eight hours~~) thirty days prior to the beginning of such furlough, the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest Washington state patrol district facility in the county wherein the furloughed prisoner is to be residing, and other similar criminal justice agencies that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the (~~forty-eight hour~~) thirty-day time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: PROVIDED, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is

released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the sheriff or director of public safety, the nearest Washington state patrol district facility, and other similar criminal justice agencies that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his or her release or discharge.

Local law enforcement agencies (~~may~~) shall require persons convicted of sex offenses to register pursuant to RCW 9A.44.130. In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW 9A.44.130 which source may include any officer or other agency or subdivision of the state.

(5) The existence of the notice requirement in subsection (2) of this section will not require any extension of the release date in the event the release plan changes after notification.

Sec. 8. RCW 71.05.325 and 1990 c 3 s 111 are each amended to read as follows:

(1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released from involuntary treatment because a new petition for involuntary treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least (~~thirty~~) forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is to be released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least (~~thirty~~) forty-five days before the anticipated release and shall describe the conditions under which the release is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed temporary releases, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the release date in the event the release plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical furloughs.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425.

Sec. 9. RCW 71.05.425 and 1992 c 186 s 9 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ~~((ten))~~ thirty days before conditional release, final discharge, authorized leave under RCW 71.05.325(2), or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of conditional release, final discharge, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(3) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(3):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(3) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city

and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Next of kin" means a person's spouse, parents, siblings, and children;
- (d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Passed the House February 9, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 130

[Substitute House Bill 2560]

WORK-STUDY PROGRAM

AN ACT Relating to financial aid; amending RCW 28B.12.010, 28B.12.020, 28B.12.030, 28B.12.040, 28B.12.050, and 28B.12.070; and reenacting and amending RCW 28B.12.060.

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

Sec. 1. RCW 28B.12.010 and 1974 ex.s. c 177 s 1 are each amended to read as follows:

There is hereby created a program of financial aid to students pursuing a post-secondary education which shall be known as the ((college)) state work-study program.

Sec. 2. RCW 28B.12.020 and 1974 ex.s. c 177 s 2 are each amended to read as follows:

The purpose of the program created in RCW 28B.12.010 is to provide financial assistance to needy students, including needy students from middle-income families, attending eligible post-secondary institutions in the state of Washington by stimulating and promoting their employment, thereby enabling them to pursue courses of study at such institutions. An additional purpose of this program shall be to provide such needy students, wherever possible, with employment related to their academic or vocational pursuits.

Sec. 3. RCW 28B.12.030 and 1974 ex.s. c 177 s 3 are each amended to read as follows:

As used in this chapter, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent:

(1) The term "needy student" shall mean a student enrolled or accepted for enrollment at a post-secondary institution who, according to a system of need analysis approved by the (~~commission on~~) higher education coordinating board, demonstrates a financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter.

(2) The term "eligible institution" shall mean any post-secondary institution in this state accredited by the Northwest Association of (~~Secondary and Higher~~) Schools and Colleges or any public (~~vocational-technical school~~) technical college in the state.

Sec. 4. RCW 28B.12.040 and 1993 c 385 s 3 are each amended to read as follows:

With the assistance of an advisory committee, the higher education coordinating board shall develop and administer the (~~college~~) state work-study program (~~and~~). The board shall be authorized to enter into agreements with employers and eligible institutions for the operation of the program. These agreements shall include such provisions as the higher education coordinating board may deem necessary or appropriate to carry out the purposes of this chapter.

The members of the work-study advisory committee may include, but need not be limited to representatives of public and private community colleges, technical colleges, and four-year institutions of higher education; vocational schools; students; community service organizations; public schools; business; and labor. When selecting members of the advisory committee, the board shall consult with institutions of higher education, the state board for community and technical colleges, the work force training and education coordinating board, and appropriate associations and organizations. With the exception of off-campus community service placements, the share from moneys disbursed under the (~~college~~) state work-study program of the compensation of students employed under such program in accordance with such agreements shall not exceed eighty percent of the total such compensation paid such students.

By rule, the board shall define community service placements and may determine any salary matching requirements for any community service employers.

Sec. 5. RCW 28B.12.050 and 1987 c 330 s 201 are each amended to read as follows:

The higher education coordinating board shall disburse (~~(college)~~) state work-study funds. In performing its duties under this section, the board shall consult eligible institutions and post-secondary education advisory and governing bodies. The board shall establish criteria designed to achieve such distribution of assistance under this chapter among students attending eligible institutions as will most effectively carry out the purposes of this chapter.

Sec. 6. RCW 28B.12.060 and 1993 sp.s. c 18 s 3 and 1993 c 281 s 14 are each reenacted and amended to read as follows:

The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under (~~(such)~~) the work-study program reasonably available, to the extent of available funds, to all eligible students in eligible post-secondary institutions in need thereof. (~~(Such)~~) The rules shall include:

(1) Providing work under the (~~(college)~~) state work-study program (~~(which)~~) that will not result in the displacement of employed workers or impair existing contracts for services(~~(-)~~);

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology(~~(-)~~);

(3) Placing priority on (~~(the securing of)~~) providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013 except resident students defined in RCW 28B.15.012(2)(e)(~~(-)~~);

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) Provisions to assure that in the state institutions of higher education, utilization of this (~~(student)~~) work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the Washington personnel resources board's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(5) Provisions to encourage job placements in occupations that meet Washington's economic development goals, especially those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries.

Sec. 7. RCW 28B.12.070 and 1985 c 370 s 61 are each amended to read as follows:

Each eligible institution shall submit to the higher education coordinating board an annual report in accordance with such requirements as are ~~((promulgat-
ed))~~ adopted by the ~~((commission))~~ board.

Passed the House February 9, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

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CHAPTER 131

[Substitute House Bill 2570]

INSURANCE LICENSING AND FEES

AN ACT Relating to insurance licensing requirements; and amending RCW 48.36A.270, 48.14.010, 48.15.070, 48.17.150, 48.17.160, 48.17.563, 48.05.390, and 48.19.040.

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

Sec. 1. RCW 48.36A.270 and 1987 c 366 s 27 are each amended to read as follows:

~~((Societies which are now authorized to transact business in this state may continue the business until April 1, 1988. The authority of the societies and all societies licensed under this chapter, may be renewed annually, but in all cases to terminate on April 1st each year. However, a license so issued shall continue in full force and effect until the new license is issued or specifically refused.))~~

A license under this chapter continues in force until suspended, revoked, or not renewed. A license is subject to renewal annually on the first day of July upon payment of the fee for the license. If not so renewed, the certificate expires as of the thirtieth day of June of the same year. Licenses existing on the effective date of this act continue in force until July 1, 1995, unless revoked or suspended.

For each license or renewal the society shall pay the commissioner the fee established pursuant to RCW 48.14.010, subject to the retaliatory provision of RCW 48.14.040. A certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

Sec. 2. RCW 48.14.010 and 1993 c 462 s 57 are each amended to read as follows:

(1) The commissioner shall collect in advance the following fees:

(a) For filing charter documents:

- (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed \$250.00
- (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
- (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.

(b) Certificate of authority:

- (i) Issuance \$ 25.00
- (ii) Renewal \$ 25.00

(c) Annual statement of insurer, filing \$ 20.00

(d) Organization or financing of domestic insurers and affiliated corporations:

- (i) Application for solicitation permit, filing \$100.00
- (ii) Issuance of solicitation permit \$ 25.00

(e) Agents' licenses:

- (i) Agent's qualification licenses (~~each year~~) every two years \$ ~~((25.00))~~
50.00
- (ii) Filing of appointment of each such agent, (~~each year~~) every two years \$ ~~((40.00))~~
20.00
- (iii) Limited license issued pursuant to RCW 48.17.190, (~~each year~~) every two years \$ ~~((40.00))~~
20.00

(f) Reinsurance intermediary licenses:

- (i) Reinsurance intermediary-broker, each year \$ 50.00
- (ii) Reinsurance intermediary-manager, each year \$100.00

(g) Brokers' licenses:

- (i) Broker's license, (~~each year~~) every two years . . . \$ ~~((50.00))~~
100.00
- (ii) Surplus line broker, (~~each year~~) every two years . \$ ~~((100.00))~~
200.00

(h) Solicitors' license, (each year) <u>every two years</u>	\$ ((10.00)) <u>20.00</u>
(i) Adjusters' licenses:	
(i) Independent adjuster, (each year) <u>every two years</u>	\$ ((25.00)) <u>50.00</u>
(ii) Public adjuster, (each year) <u>every two years</u>	\$ ((25.00)) <u>50.00</u>
(j) Resident general agent's license, (each year) <u>every two years</u>	\$ ((25.00)) <u>50.00</u>
(k) Managing general agent appointment, (each year) <u>every two years</u>	\$ ((100.00)) <u>200.00</u>
(l) Examination for license, each examination:	
All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service	\$ ((10.00)) <u>20.00</u>
(m) Miscellaneous services:	
(i) Filing other documents	\$ 5.00
(ii) Commissioner's certificate under seal	\$ 5.00
(iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.	

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund: PROVIDED, That fees for examinations administered by an independent testing service which are approved by the commissioner pursuant to subsection (1)(l) of this section shall be collected directly by such independent testing service and retained by it.

Sec. 3. RCW 48.15.070 and 1983 1st ex.s. c 32 s 24 are each amended to read as follows:

Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

~~(2) ((The license fee shall be one hundred dollars for each license year during any part of which the license is in force. The annual renewal date shall be determined by the commissioner. The commissioner shall adopt a rule providing for the proration, on a quarterly basis, of the license fee. The proration shall be applicable only: (a) To applicants who apply for a license after the expiration of the first quarter of any license year, or (b) to licensees whose licenses would exist for less than nine months as a result of the adoption of the annual renewal date.))~~ The license shall expire if not timely renewed. Surplus line brokers licenses shall be valid for the time period established by the commission unless suspended or revoked at an earlier date.

(3) Prior to issuance of license the applicant shall file with the commissioner a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he will conduct business under the license in accordance with the provisions of this chapter and that he will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the amount stated in the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting such broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.

(6) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

Sec. 4. RCW 48.17.150 and 1988 c 248 s 9 are each amended to read as follows:

(1) To qualify for an agent's or broker's license an applicant must otherwise comply with this code therefor and must

(a) be eighteen years of age or over, if an individual;

(b) be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) be empowered to be an agent or broker, as the case may be, under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) complete such minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) successfully pass any examination as required under RCW 48.17.110;

(f) be a trustworthy person;

(g) if for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license; and

(h) if for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that he possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker: PROVIDED, That the commissioner shall require that continuing education courses will be made available on a state-wide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses. The continuing education requirements shall be appropriate to the license for the kinds of insurance specified in RCW 48.17.210: PROVIDED FURTHER, That the continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is so qualified and that the license fee has been paid, (~~he shall issue~~) the license shall be issued. Otherwise, the commissioner shall refuse to issue the license.

Sec. 5. RCW 48.17.160 and 1990 1st ex.s. c 3 s 3 are each amended to read as follows:

(1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments (~~shall be for one year and shall~~) expire if not timely renewed. Each insurer shall (~~annually~~) pay the renewal fee set forth for each agent holding an appointment on the (~~annual~~) renewal date assigned the agents of the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system.

Sec. 6. RCW 48.17.563 and 1989 c 323 s 7 are each amended to read as follows:

(1) The commissioner may require insurance education providers to furnish specific information regarding their curricula, faculty, methods of monitoring attendance, and other matters reasonably related to providing insurance education under this chapter. The commissioner may grant approvals to such providers who demonstrate the ability to conduct and certify completion of one or more courses satisfying the insurance education requirements of RCW 48.17.150.

(2) Provider and course approvals are valid for the time period established by the commissioner and shall expire if not timely renewed. Each provider shall pay the renewal fee set forth in RCW 48.14.010(1)(n).

(3) In granting approvals for courses required by RCW 48.17.150(1)(d):

(a) The commissioner may require the availability of a licensed agent with appropriate experience on the premises whenever instruction is being offered; and

(b) The commissioner shall not deny approval to any provider on the grounds that the proposed method of education employs nontraditional teaching techniques, such as substituting taped lectures for live instruction, offering instruction without fixed schedules, or providing education at individual learning rates.

Sec. 7. RCW 48.05.390 and 1988 c 248 s 6 are each amended to read as follows:

(1) The report required by RCW 48.05.380 shall include the types of insurance written by the insurer for policies pertaining to:

(a) Medical malpractice for physicians and surgeons, hospitals, other health care professions, and other health care facilities individually;

(b) Products liability. However, if comparable information is included in the annual statement required by RCW 48.05.250, products liability data must not be reported under RCW 48.05.380;

- (c) Attorneys' malpractice;
- (d) Architects' and engineers' malpractice;
- (e) Municipal liability; and
- (f) Day care center liability.

(2) The report shall include the following data by the type of insurance for the previous year ending on the thirty-first day of December:

- (a) Direct premiums written;
- (b) Direct premiums earned;
- (c) Net investment income, including net realized capital gain and losses, using appropriate estimates where necessary;
- (d) Incurred claims, development as the sum of the following:
 - (i) Dollar amount of claims closed with payments; plus
 - (ii) Reserves for reported claims at the end of the current year; minus
 - (iii) Reserves for reported claims at the end of the previous year; plus
 - (iv) Reserves for incurred but not reported claims at the end of the current year; minus
 - (v) Reserves for incurred but not reported claims at the end of the previous year; plus
 - (vi) Reserves for loss adjustment expense at the end of the current year; minus
 - (vii) Reserves for loss adjustment expense at the end of the previous year.
- (e) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;
- (f) Net underwriting gain or loss;
- (g) Net operation gain or loss, including net investment income; and
- (h) ~~((The number and dollar amount of claims closed with payment, by year incurred and the amount reserved for them;~~
- ~~(i) The number of claims closed without payment and the dollar amount reserved for those claims; and~~
- ~~(j))~~ Other information requested by the insurance commissioner.

(3) The report shall be filed annually with the commissioner, no later than the first day of May.

Sec. 8. RCW 48.19.040 and 1989 c 25 s 4 are each amended to read as follows:

(1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and rating rule, 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 indicate the 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. An insurer 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) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) 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))~~ (6) 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.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 132

[Engrossed Substitute House Bill 2607]

PUBLIC WORKS—ALTERNATIVE CONTRACTING PROCEDURE

AN ACT Relating to procurement by state agencies and municipalities of public works that are unique due to cost, complexity, or public interest; and adding a new chapter to Title 39 RCW.

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

NEW SECTION. **Sec. 1. LEGISLATIVE FINDINGS.** The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works

contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures by state agencies and large municipalities under limited circumstances, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures.

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

(1) "Alternative public works contracting procedure" means the design-build and the general contractor/construction manager contracting procedures authorized in sections 5 and 6 of this act, respectively.

(2) "Public body" means the state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand.

(3) "Public works project" means any work for a public body within the definition of the term public work in RCW 39.04.010.

NEW SECTION. Sec. 3. PUBLIC NOTIFICATION AND REVIEW PROCESS. (1) An alternative public works contracting procedure authorized under this chapter may be used for a specific public works project only after a public body determines that use of the alternative procedure will serve the public interest by providing a substantial fiscal benefit, or that use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules.

(2) Whenever a public body determines to use one of the alternative public works contracting procedures authorized under this chapter for a public works project, it shall first ensure adequate public notification and opportunity for public review and comment as follows:

(a) The public body shall conduct a public hearing to receive public comment on its preliminary determination to use the alternative public works contracting procedure. At least twenty days before the public hearing, the public body shall cause notice of such hearing to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done. The notice shall clearly describe the proposed project and the preliminary determination to use the alternative public works contracting procedure. The notice shall also indicate when, where, and how persons may present their comments on the preliminary determination, and where persons may obtain additional written information describing the project.

(b) The public body shall summarize in a written statement its reasons for using the alternative public works contracting procedure. This statement, along

with other relevant information describing the project, shall be made available upon request to interested parties at least twenty days before the public hearing.

(c) The public body shall receive and record both written and oral comments concerning the preliminary determination at the public hearing.

(3) Final determinations to use an alternative public works contracting procedure may be made only by the legislative or governing authority of the public body, or, in the case of state agencies, by the agency director or chief administrative officer. Final determinations shall be accompanied by a concise statement of the principal reasons for overruling any considerations urged against the determination. Final determinations are subject to appeal to superior court within thirty days of the determination, provided that notice of such appeal shall be provided to the public body within seven days of the determination. The court may award reasonable attorneys' fees to the prevailing party.

(4) Following completion of a public works project using one of the alternative public works contracting procedures under this chapter, a report shall be submitted to the legislative or governing authority of the public body reviewing the utilization and performance of the alternative public works contracting procedure. Such report shall be made available to the public.

NEW SECTION. Sec. 4. SPECIAL COUNTY DEVELOPMENT AUTHORITY. An alternative public works contracting procedure authorized in this chapter may be used by a special agency, authority, or other district established by a county for construction of a baseball stadium provided that:

(1) The county is authorized to use the alternative public works contracting procedure under this chapter;

(2) The special agency, authority, or district complies with all the requirements of this chapter related to the alternative public works contracting procedure utilized; and

(3) The county itself complies with section 3 of this act with respect to the baseball stadium project to be undertaken by the special agency, authority, or district.

NEW SECTION. Sec. 5. DESIGN-BUILD. (1) Notwithstanding any other provision of law, and after complying with section 3 of this act, the following public bodies may utilize the design-build procedure of public works contracting for public works projects authorized under this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; and every county with a population greater than four hundred fifty thousand. For the purposes of this section, "design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the structure, facility, or other item specified in the contract.

(2) Public bodies authorized under this section may utilize the design-build procedure for public works projects valued over ten million dollars where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology;

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) The program elements of the project design are simple and do not involve complex functional interrelationships.

(3) The state department of general administration may use the design-build procedure authorized in subsection (2)(c) of this section for one project.

(4) Contracts for design-build services shall be awarded through a competitive process utilizing public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done, a notice of its request for proposals for design-build services and the availability and location of the request for proposal documents. The request for proposal documents shall include:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications, functional and operational elements, and minimum and maximum net and gross areas of any building;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications, if any, to be required of the proposer;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. Evaluation factors shall include, but not be limited to: Proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected work loads of the firm; and the concept of the proposal;

(e) The form of the contract to be awarded;

(f) The maximum allowable construction cost and minority and women enterprise total project goals;

(g) The amount to be paid to finalists submitting best and final proposals who are not awarded a design-build contract; and

(h) Other information relevant to the project.

(5) The public body shall establish a committee to evaluate the proposals based on the factors, weighting, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three nor more than five finalists to submit best and final proposals. Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals. Final proposals may not be considered if the proposal cost is greater than the maximum allowable construction cost identified in the initial request for proposals.

(6) The public body shall initiate negotiations with the firm submitting the highest scored final proposal. If the public body is unable to execute a contract with that firm, negotiations with that firm may be suspended or terminated and

the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. The public body may, in its sole discretion, reject all proposals. The finalist awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals who are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects.

NEW SECTION. Sec. 6. GENERAL CONTRACTOR/CONSTRUCTION MANAGER. (1) Notwithstanding any other provision of law, and after complying with section 3 of this act, the following public bodies may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand. For the purposes of this section, "general contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

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

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

(3) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women business enterprise total project goals shall be specified in the public solicitation of proposals and the bid instructions to the general contractor/construction manager finalists. A public body is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable

construction cost. A public body shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the public body's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over two hundred thousand dollars shall provide a performance and payment bond for their contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with section 8 of this act or, if unsuccessful in such negotiations, rebid.

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

NEW SECTION. Sec. 7. PROJECT MANAGEMENT AND CONTRACTING REQUIREMENTS. (1) A public body utilizing the alternative public works contracting procedures authorized under sections 5 and 6 of this act shall provide for:

- (a) The preparation of appropriate, complete, and coordinated design documents consistent with the procedure utilized;
- (b) To the extent appropriate, an independent review of the contract documents through value engineering or constructability studies prior to bid or proposal solicitation;
- (c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;
- (d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;
- (e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects; and
- (f) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation.

(2) A public body utilizing the alternative public works contracting procedures under sections 5 and 6 of this act may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals.

NEW SECTION. Sec. 8. NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER OR PROPOSER. Notwithstanding the provisions of RCW 39.04.015, a public body is authorized to negotiate an adjustment to the lowest bid or proposal price for a public works project awarded under sections 5 and 6 of this act based upon agreed changes to the contract plans and specifications under the following conditions:

- (1) All responsive bids or proposal prices exceed the available funds, as certified by an appropriate fiscal officer;
- (2) The apparent low-responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and
- (3) The negotiated adjustment will bring the bid or proposal price within the amount of available funds.

NEW SECTION. Sec. 9. IMPLEMENTATION. This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project.

NEW SECTION. Sec. 10. PUBLIC INSPECTION OF CERTAIN RECORDS. (1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.17 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.17 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

NEW SECTION. Sec. 11. INDEPENDENT REVIEW AND STUDY. (1) There is established a temporary independent oversight committee to review the utilization of the alternative public works contracting procedures authorized under this chapter and to evaluate potential future utilization of other alternative contracting procedures, including, but not limited to, contractor prequalification. The membership of the committee shall include: Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives; two members of the senate, one from each major caucus, appointed by the president of the senate; representatives from the appropriate segments of the construction and design industries, appointed by the governor; representatives from appropriate labor organizations, appointed by the governor; representatives from public bodies authorized to use the alternative public works contracting procedures under this chapter, appointed by the governor; and a representative from the office of financial management, appointed by the governor. The governor shall consider the recommendations of the established organizations representing the construction and design industries and organized labor in making the industry and labor appointments to the committee.

(2) The committee shall meet quarterly beginning after July 1, 1994. At the first meeting of the committee, a chair or cochairs shall be selected from among the committee's membership. Staff support for the committee shall be provided by the agencies and organizations represented on the committee.

(3) Public bodies utilizing the alternative contracting procedures authorized under this chapter shall provide any requested information concerning implementation of projects under this chapter to the committee in a timely manner, excepting any trade secrets or proprietary information.

(4) The committee shall report to the appropriate standing committees of the legislature by December 10, 1996, concerning its findings and recommendations.

NEW SECTION. Sec. 12. APPLICATION. The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 1997. Methods of public works contracting

authorized by sections 5 and 6 of this act shall remain in full force and effect until completion of contracts signed before July 1, 1997.

NEW SECTION. Sec. 13. CAPTIONS. Captions as used in this act do not constitute any part of law.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 1997:

- (1) RCW 39.—.— and 1994 c . . . s 1 (section 1 of this act);
- (2) RCW 39.—.— and 1994 c . . . s 2 (section 2 of this act);
- (3) RCW 39.—.— and 1994 c . . . s 3 (section 3 of this act);
- (4) RCW 39.—.— and 1994 c . . . s 4 (section 4 of this act);
- (5) RCW 39.—.— and 1994 c . . . s 5 (section 5 of this act);
- (6) RCW 39.—.— and 1994 c . . . s 6 (section 6 of this act);
- (7) RCW 39.—.— and 1994 c . . . s 7 (section 7 of this act);
- (8) RCW 39.—.— and 1994 c . . . s 8 (section 8 of this act);
- (9) RCW 39.—.— and 1994 c . . . s 9 (section 9 of this act);
- (10) RCW 39.—.— and 1994 c . . . s 10 (section 10 of this act);
- (11) RCW 39.—.— and 1994 c . . . s 11 (section 11 of this act);
- (12) RCW 39.—.— and 1994 c . . . s 12 (section 12 of this act);
- (13) RCW 39.—.— and 1994 c . . . s 13 (section 13 of this act);
- (14) RCW 39.—.— and 1994 c . . . s 14 (section 14 of this act); and
- (15) RCW 39.—.— and 1994 c . . . s 15 (section 15 of this act).

NEW SECTION. Sec. 16. CODIFICATION. Sections 1 through 15 of this act shall constitute a new chapter in Title 39 RCW.

Passed the House February 14, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

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CHAPTER 133

[Substitute House Bill 2642]

FIREWORKS

AN ACT Relating to strengthening state fireworks regulation; amending RCW 70.77.146, 70.77.177, 70.77.255, 70.77.265, 70.77.270, 70.77.280, 70.77.325, 70.77.355, 70.77.370, 70.77.435, 70.77.440, 70.77.450, and 70.77.535; adding new sections to chapter 70.77 RCW; adding a new section to chapter 9.41 RCW; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 70.77.146 and 1984 c 249 s 4 are each amended to read as follows:

"Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as ~~((a necessary))~~ an integral part of a motion picture, radio or television production, ~~((theatrical))~~ or ~~((opera))~~ live entertainment.

NEW SECTION. Sec. 2. A new section is added to chapter 70.77 RCW to read as follows:

"City" means any city or town.

Sec. 3. RCW 70.77.177 and 1984 c 249 s 6 are each amended to read as follows:

"Local fire official" means the chief of a local fire department or ~~((fire protection district))~~ a chief fire protection officer or such other person as may be designated by the governing body of a city~~((;))~~ or county~~((; or district))~~ to act as a local fire official under this chapter.

Sec. 4. RCW 70.77.255 and 1984 c 249 s 10 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, no person, without an appropriate state license or permit may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks; or

(c) Transport fireworks, except as a public carrier delivering to a licensee.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail.

Sec. 5. RCW 70.77.265 and 1984 c 249 s 12 are each amended to read as follows:

The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city~~((;))~~ or county~~((; or fire protection district))~~.

Sec. 6. RCW 70.77.270 and 1984 c 249 s 13 are each amended to read as follows:

The governing body of a city~~((;))~~ or county~~((; or fire protection district))~~ may grant or deny an application for a permit under RCW 70.77.260(1). The governing body may place reasonable conditions on any permit it issues.

Sec. 7. RCW 70.77.280 and 1984 c 249 s 14 are each amended to read as follows:

The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city((?)) or county((~~?~~ ~~or fire protection district~~)). The governing body may grant or deny the application and may place reasonable conditions on any permit it issues.

Sec. 8. RCW 70.77.325 and 1991 c 135 s 4 are each amended to read as follows:

(1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional calendar year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application by June 10 of the current year. The director of community, trade, and economic development, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The director of community, trade, and economic development, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application.

Sec. 9. RCW 70.77.355 and 1986 c 266 s 105 are each amended to read as follows:

(1) Any adult person may secure a general license from the director of community, trade, and economic development, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city((?)) or county((~~?~~ ~~or fire protection district~~)), except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the director of community, trade, and economic development, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the director of community, trade, and economic development, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only

insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) The director of community, trade, and economic development, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the director of community, trade, and economic development, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260.

Sec. 10. RCW 70.77.370 and 1989 c 175 s 129 are each amended to read as follows:

Any applicant who has been denied a license for reasons other than making application after the date set forth in RCW 70.77.325 is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

Sec. 11. RCW 70.77.435 and 1986 c 266 s 111 are each amended to read as follows:

Any fireworks which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the director of community, trade, and economic development, through the director of fire protection, shall be subject to seizure by the director of community, trade, and economic development, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. Any fireworks seized under this section may be disposed of by the director of community, trade, and economic development, through the director of fire protection, or the agency conducting the seizure, by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later.

Sec. 12. RCW 70.77.440 and 1986 c 266 s 112 are each amended to read as follows:

(1) Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition ~~((the director of community development, through the director of fire protection,))~~ the agency conducting the seizure to return the fireworks seized upon the ground that such fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the ~~((director of community development, through the director of fire protection,))~~ authority conducting the seizure within fifteen days after filing and an oral hearing granted the petitioner, if requested. Hearings shall be conducted in accordance with state law or chapter 34.05 RCW. Notice of the decision of the ~~((director of community development, through the director of fire protection,))~~ authority conducting the hearing shall be served upon the petitioner. The ~~((director of community development, through the director of fire protection,))~~ authority conducting the hearing may order the fireworks seized under this

chapter disposed of or returned to the petitioner if illegally or erroneously seized. The determination of the ~~((director of community development, through the director of fire protection,))~~ authority conducting the hearing is final unless within sixty days an action is commenced in a court of competent jurisdiction in the state of Washington for the recovery of the fireworks seized ~~((by the director of community development, through the director of fire protection))~~ under this chapter.

(2) If the fireworks are not returned to the petitioner or destroyed pursuant to RCW 70.77.435, the director of community, trade, and economic development, through the director of fire protection, or the agency conducting the seizure may sell confiscated common fireworks ~~((and)),~~ special fireworks, and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers ~~((licensed))~~ or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the director of community, trade, and economic development, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section shall be deposited in the general fund. Fireworks that are not legal for use and possession in this state shall be destroyed by the director of community, trade, and economic development, through the director of fire protection, or by the agency conducting the seizure.

Sec. 13. RCW 70.77.450 and 1986 c 266 s 113 are each amended to read as follows:

The director of community, trade, and economic development, through the director of fire protection, may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the director of community, trade, and economic development, through the director of fire protection, his or her deputies ~~((his or her))~~ or salaried assistants ~~((and the chief of any city or county fire department or fire protection district)),~~ the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section.

Sec. 14. RCW 70.77.535 and 1984 c 249 s 35 are each amended to read as follows:

This chapter does not prohibit the assembling, compounding, use, and display of special effects ~~((of whatever nature))~~ by any person engaged in the production of motion pictures, radio or television productions, ~~((theatricals, or operas))~~ or live entertainment when such use and display is ~~((a necessary))~~ an

integral part of the production and such person possesses a valid permit from the local fire official.

NEW SECTION. **Sec. 15.** A new section is added to chapter 70.77 RCW to read as follows:

The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means.

NEW SECTION. **Sec. 16.** A new section is added to chapter 9.41 RCW to read as follows:

Nothing in this chapter shall prohibit the possession, sale, or use of fireworks when possessed, sold, or used in compliance with chapter 70.77 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 February 10, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 134

[House Bill 2645]

APPLE ADVERTISING COMMISSION—POWERS AND DUTIES

AN ACT Relating to the apple advertising commission; and amending RCW 15.24.070.

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

Sec. 1. RCW 15.24.070 and 1987 c 393 s 3 are each amended to read as follows:

The Washington state apple advertising commission is hereby declared and created a corporate body. The powers and duties of the commission shall include the following:

(1) To elect a (~~chairman~~) chair and such other officers as it deems advisable; and to adopt, rescind, and amend rules(~~(-regulations,)~~) and orders for the exercise of its powers (~~(hereunder)~~) under this chapter, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To investigate and prosecute violations (~~(hereof)~~) of this chapter;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and apple products (~~(hereof)~~);

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient; (~~and~~)

(10) To borrow money and incur indebtedness;

(11) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms. The commission shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises. The authority to make expenditures granted by this subsection includes the authority to make expenditures to provide scholarships or financial assistance to persons as defined in RCW 1.16.080 or entities associated with the apple industry, but is not limited to the authority to make expenditures for such a purpose; and

(12) To engage in appropriate fund-raising activities for the purpose of supporting the activities of the commission authorized by this chapter.

Passed the House March 5, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 135

[Substitute House Bill 2655]

MANUFACTURED HOMES—CERTIFICATE OF OWNERSHIP STUDY

AN ACT Relating to ownership of manufactured homes; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes the importance of manufactured housing as an affordable housing source, and the need to develop a feasible alternative to vehicle titling for obtaining and transferring ownership of manufactured homes. The department of community, trade, and economic development, the department of licensing, and the department of revenue shall study and develop proposed legislation that creates a certificate of ownership

program for manufactured homes. The department of community, trade, and economic development shall act as the lead agency in the development of the proposed legislation. The proposed legislation shall treat manufactured housing as real property to the greatest extent possible for ownership and taxation purposes, with the program being administered at the local level. The departments shall consult with the various affected interest groups, including local government officials and the affordable housing advisory board established in RCW 43.185B.020, in the development of this proposed legislation. The departments shall report their findings and proposed legislation to the house of representatives trade, economic development, and housing committee and the senate labor and commerce committee by December 1, 1994.

Passed the House February 9, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 136

[Substitute House Bill 2662]

HAZARDOUS WASTE FEES

AN ACT Relating to hazardous waste fees; amending RCW 70.95E.010, 70.95E.020, 70.95E.030, and 70.95E.050; and repealing RCW 70.95E.060.

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

Sec. 1. RCW 70.95E.010 and 1990 c 114 s 11 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) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

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

(3) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Known generators" means persons that have notified the department ~~((7))~~ and have received an EPA/state identification number ~~((and generate quantities of hazardous wastes regulated under chapter 70.105 RCW)).~~

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Potential generators" means all persons whose primary business activities are identified by the department to be likely to generate any quantity of hazardous wastes.

(11) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(12) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(13) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number.

Sec. 2. RCW 70.95E.020 and 1990 c 114 s 12 are each amended to read as follows:

A fee is imposed for the privilege of generating or potentially generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every known generator or potential generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department of revenue. A potential generator shall be exempt from the fee imposed under this section if the potential generator is entitled to the exemption in RCW 82.04.300 in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section ~~((shall be first due on July 31, 1990, for any generator or potential generator operating in Washington from March 21, 1990, to December 31, 1990, or any part thereof))~~ is due annually by July 1 of the year following the calendar year for which the fee is imposed, except the fee scheduled to be imposed for calendar year 1993 shall be imposed on known generators only.

Sec. 3. RCW 70.95E.030 and 1990 c 114 s 13 are each amended to read as follows:

~~((4))~~ Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70.95C.200 shall pay an ~~((additional))~~ annual fee to support implementation of RCW 70.95C.200 and 70.95C.040. These fees are

to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed one million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

~~((2) Fees imposed by this section shall be first due on July 1, 1991, for facilities that are required to prepare plans in 1992, on July 1, 1992, for facilities that are required to prepare plans in 1993, and on July 1, 1993, for facilities that are required to prepare plans in 1994.))~~ The annual fee imposed by this section shall be first due on July 1 of the year prior to the year that the facility is required to prepare a plan, and by July 1 of each year thereafter.

Sec. 4. RCW 70.95E.050 and 1990 c 114 s 15 are each amended to read as follows:

In administration of this chapter for the enforcement and collection of the fees due and owing under this chapter, the department of revenue is authorized to apply the provisions of chapter 82.32 RCW, except that the provisions of RCW ~~((82.32.050 and 82.32.090))~~ 82.32.045 shall not apply.

NEW SECTION. **Sec. 5.** RCW 70.95E.060 and 1990 c 114 s 16 are each repealed.

Passed the House February 11, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 137

[Substitute House Bill 2718]

**REAL ESTATE EXCISE TAX—UTILITY EASEMENT
OR RIGHT OF WAY AFFIDAVITS**

AN ACT Relating to real estate excise tax affidavits; and amending RCW 82.45.150.

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

Sec. 1. RCW 82.45.150 and 1993 sp.s. c 25 s 509 are each amended to read as follows:

All of chapter 82.32 RCW, except RCW 82.32.030, ~~((82.32.040,))~~ 82.32.050, 82.32.140, and 82.32.270 and except for the penalties and the limitations thereon imposed by RCW 82.32.090, applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right of way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter.

Passed the House February 15, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 138

[House Bill 2811]

STATE PROCUREMENT PRACTICES—OBSOLETE PROVISIONS REPEALED

AN ACT Relating to elimination of obsolete state procurement practices; reenacting and amending RCW 43.19.190; and repealing RCW 39.24.020, 39.24.030, 39.24.040, 39.25.010, 39.25.020, 39.25.030, 43.19.504, 43.19.506, and 43.19.510.

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

Sec. 1. RCW 43.19.190 and 1993 sp.s. c 10 s 2 and 1993 c 379 s 102 are each reenacted and amended to read as follows:

The director of general administration, through the state purchasing and material control director, shall:

- (1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by the legislature: PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935: PROVIDED FURTHER, That, except for the authority of the risk manager to purchase insurance and bonds, the director is not required to provide purchasing services for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029;

(3) Provide the required staff assistance for the state supply management advisory board through the division of purchasing;

(4) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies: PROVIDED, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, or from policies established by the director after consultation with the state supply management advisory board: PROVIDED FURTHER, That delegation of such authorization to a state agency, including an educational institution to which this section applies, to purchase or sell material, equipment,

services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(5) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(6) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(7) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(8) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications after receiving the recommendation of the supply management advisory board;

(10) Provide for the maintenance of inventory records of supplies, materials, and other property;

(11) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(12) Publish procedures and guidelines for compliance by all state agencies, including those educational institutions to which this section applies, which implement overall state purchasing and material control policies;

(13) ~~((Conduct periodic visits to))~~ Advise state agencies, including ~~((those))~~ educational institutions ~~((to which this section applies, to determine if statutory provisions and supporting purchasing and material control policies are being fully implemented, and based upon such visits, take corrective action to achieve)),~~ regarding compliance with established purchasing and material control policies under existing statutes ~~((when required))~~.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

- (1) RCW 39.24.020 and 1937 c 164 s 1 & 1933 c 179 s 1;
- (2) RCW 39.24.030 and 1933 c 179 s 2;
- (3) RCW 39.24.040 and 1933 c 179 s 3;
- (4) RCW 39.25.010 and 1967 c 139 s 1;
- (5) RCW 39.25.020 and 1967 c 139 s 2;
- (6) RCW 39.25.030 and 1967 c 139 s 3;
- (7) RCW 43.19.504 and 1981 c 32 s 1;
- (8) RCW 43.19.506 and 1981 c 32 s 2; and
- (9) RCW 43.19.510 and 1981 c 32 s 3 & 1973 c 13 s 1.

Passed the House February 11, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 139

[Second Substitute Senate Bill 5341]

DRIVING UNDER THE INFLUENCE—VEHICLE SEIZURE AND FORFEITURE

AN ACT Relating to driving while under the influence of intoxicating liquor or drugs; amending RCW 46.12.270; adding a new section to chapter 46.61 RCW; repealing RCW 46.61.511, 46.61.512, 46.12.400, and 46.12.410; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.61 RCW to read as follows:

(1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a previous conviction for violation of either RCW 46.61.502 or 46.61.504 or other similar municipal ordinance, and where the offense occurs within a five-year period of the previous conviction, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On a second or subsequent conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where such offense was committed within a five-year period of the previous conviction, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent

jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure 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 is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a

determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1) (a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal.

Sec. 2. RCW 46.12.270 and 1993 c 487 s 6 are each amended to read as follows:

Any person violating RCW 46.12.250(~~(7)~~) or 46.12.260(~~(7) or 46.12.410~~) or who transfers, sells, or encumbers an interest in a vehicle in violation of section 1 of this act, with actual notice of the prohibition, is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment in a county jail for not more than ninety days.

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

- (1) RCW 46.61.511 and 1993 c 487 s 2;
- (2) RCW 46.61.512 and 1993 c 487 s 3;
- (3) RCW 46.12.400 and 1993 c 487 s 4; and
- (4) RCW 46.12.410 and 1993 c 487 s 5.

Passed the Senate March 5, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 140

[Second Substitute Senate Bill 5698]

ISO-9000 SERIES OF QUALITY SYSTEMS STANDARDS

AN ACT Relating to assisting companies to adopt ISO-9000 standards; adding a new section to chapter 43.31 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that since the publication by the international organization for standardization of its ISO-9000 series of quality systems standards, more than twenty thousand facilities in the United Kingdom and several thousand in Europe have become registered in the standards. By comparison, currently only about four hundred United States companies have adopted the standards. The international organization for standardization is a Geneva-based organization founded in 1947 to promote standardization with a view to facilitating trade.

The legislature further finds that the growing world-wide acceptance by over sixty nations of the ISO-9000 series of quality systems standards, including adoption by the twelve nations of the European Community, means that more Washington companies will need to look at the adoption of ISO-9000 to remain competitive in global markets. Adoption of ISO-9000, as well as other quality systems, may also help Washington companies improve quality. However, many small businesses know little about the standards or how registration is achieved.

It is the intent of the legislature that the department of community, trade, and economic development encourage and assist state businesses to adopt ISO-9000 and other quality systems as part of the state's strategy for global industrial competitiveness.

NEW SECTION. Sec. 2. A new section is added to chapter 43.31 RCW to read as follows:

- (1) The department, through its business assistance center, shall assist companies seeking to adopt ISO-9000 quality standards. The department shall:
 - (a) Prepare and disseminate information regarding ISO-9000;

(b) Assemble and maintain information on public and private sector individuals, organizations, educational institutions, and advanced technology centers that can provide technical assistance to firms that wish to become ISO-registered;

(c) Assemble and maintain information on Washington firms which have received ISO registration;

(d) Undertake other activities it deems necessary to execute this section;

(e) Survey appropriate sectors to determine the level of interest in receiving ISO-9000 certification and coordinate with the program;

(f) Establish a mechanism for businesses to make self-assessments of relative need to become ISO-9000 certified;

(g) Assist and support nonprofit organizations, and other organizations, currently providing education, screening, and certification training; and

(h) Coordinate the Washington program with other similar state, regional, and federal programs.

(2) For the purposes of this section, "ISO-9000" means the series of standards published in 1987, and subsequent revisions, by the international organization for standardization for quality assurance in design, development, production, final inspection and testing, and installation and servicing of products, processes, and services.

(3) For the purposes of this section, registration to the American national standards institute/American society for quality control Q90 series shall be considered ISO-9000 registration.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1994, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 4. This act shall take effect July 1, 1994.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 141

[Engrossed Substitute Senate Bill 5995]

RECKLESS ENDANGERMENT—HIGHWAY WORKERS

AN ACT Relating to reckless endangerment of highway workers; amending RCW 46.63.020; adding a new section to chapter 46.61 RCW; prescribing penalties; 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 46.61 RCW to read as follows:

(1) The secretary of transportation shall adopt standards and specifications for the use of traffic control devices in roadway construction zones on state

highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway.

(2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

(3) A person found to have committed any infraction relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(5) The department shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers.

Sec. 2. RCW 46.63.020 and 1993 c 501 s 8 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381 (6) or ~~((8))~~ (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (28) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (31) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (33) RCW 46.61.500 relating to reckless driving;
- (34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (36) RCW 46.61.522 relating to vehicular assault;
- (37) RCW 46.61.525 relating to negligent driving;
- (38) Section 1(4) of this act relating to reckless endangerment of roadway workers;

- ~~(39)~~ RCW 46.61.530 relating to racing of vehicles on highways;
- ~~((39))~~ (40) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- ~~((40))~~ (41) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- ~~((41))~~ (42) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- ~~((42))~~ (43) Chapter 46.65 RCW relating to habitual traffic offenders;
- ~~((43))~~ (44) 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;
- ~~((44))~~ (45) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- ~~((45))~~ (46) Chapter 46.80 RCW relating to motor vehicle wreckers;
- ~~((46))~~ (47) Chapter 46.82 RCW relating to driver's training schools;
- ~~((47))~~ (48) 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;
- ~~((48))~~ (49) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

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

Passed the Senate March 6, 1994.
 Passed the House March 1, 1994.
 Approved by the Governor March 28, 1994.
 Filed in Office of Secretary of State March 28, 1994.

CHAPTER 142

[Senate Bill 6061]

SPECIAL ELECTIONS—DATE MODIFIED

AN ACT Relating to special elections; amending RCW 29.13.010 and 29.13.020; and providing an effective date.

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

Sec. 1. RCW 29.13.010 and 1992 c 37 s 1 are each amended to read as follows:

(1) 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 (a) city, town, and district general elections as provided for in RCW 29.13.020, or as otherwise provided by law; (b) 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; (c) 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; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) 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.

(2) A county legislative authority may, if it deems 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. Except as provided in subsection (4) of this section, 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;
- (c) The ~~((first Tuesday after the first Monday))~~ fourth Tuesday in April;
- (d) The third 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.

(3) In addition to the dates set forth in subsection (2) (a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from ~~((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.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) 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. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer.

Sec. 2. RCW 29.13.020 and 1992 c 37 s 2 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.315.280 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 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 the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The ~~((first Tuesday after the first Monday))~~ fourth Tuesday in April;
- (d) The third 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.

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2) (a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from ~~((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 subsection (2) (e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) 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. 3.** This act shall take effect January 1, 1995.

Passed the Senate March 5, 1994.
 Passed the House March 2, 1994.
 Approved by the Governor March 28, 1994.
 Filed in Office of Secretary of State March 28, 1994.

CHAPTER 143

[Substitute Senate Bill 6096]

MILK AND MILK PRODUCTS

AN ACT Relating to milk and milk products; amending RCW 15.32.010, 15.36.011, 15.36.080, 15.32.110, 15.32.100, 15.32.580, 15.32.590, 15.36.100, 15.36.490, 15.36.500, 15.36.470, 15.36.070, 15.32.160, 15.32.530, 15.36.110, 15.36.090, 15.36.300, 15.36.520, 15.32.610, 15.36.115, 15.36.480, 15.36.107, 15.32.450, 15.35.080, 15.36.120, and 15.36.595; reenacting and amending RCW 35A.69.010; adding new sections to chapter 15.36 RCW; recodifying RCW 15.32.010, 15.36.011, 15.36.080, 15.32.110, 15.32.100, 15.32.580, 15.36.100, 15.36.490, 15.36.500, 15.36.120, 15.32.160, 15.36.150, 15.36.470, 15.36.070, 15.32.530, 15.36.110, 15.36.260, 15.36.265, 15.36.420, 15.36.300, 15.32.410, 15.32.420, 15.32.450, 15.32.460, 15.36.520, 15.36.530, 15.36.115, 15.36.480, 15.32.550, 15.36.595, 15.36.600, 15.32.710, 15.32.720, 15.32.730, 15.36.005, 15.32.900, 15.32.910, 15.36.105, and 15.36.107; repealing RCW 15.32.051, 15.32.060, 15.32.070, 15.32.080, 15.32.090, 15.32.120, 15.32.130, 15.32.140, 15.32.150, 15.32.220, 15.32.250, 15.32.260, 15.32.330, 15.32.340, 15.32.360, 15.32.380, 15.32.430, 15.32.440, 15.32.490, 15.32.500, 15.32.510, 15.32.520, 15.32.540, 15.32.560, 15.32.570, 15.32.582, 15.32.584, 15.32.590, 15.32.600, 15.32.610, 15.32.620, 15.32.630, 15.32.660, 15.32.670, 15.32.680, 15.32.700, 15.32.740, 15.32.750, 15.32.755, 15.32.760, 15.32.770, 15.32.780, 15.32.790, 15.36.020, 15.36.030, 15.36.040, 15.36.055, 15.36.060, 15.36.075, 15.36.090, 15.36.140, 15.36.155, 15.36.160, 15.36.165, 15.36.170, 15.36.175, 15.36.180, 15.36.185, 15.36.190, 15.36.195, 15.36.200, 15.36.205, 15.36.210, 15.36.215, 15.36.220, 15.36.225, 15.36.230, 15.36.235, 15.36.240, 15.36.245, 15.36.250, 15.36.255, 15.36.270, 15.36.280, 15.36.320, 15.36.325, 15.36.330, 15.36.335, 15.36.340, 15.36.345, 15.36.350, 15.36.355, 15.36.360, 15.36.365, 15.36.370, 15.36.375, 15.36.380, 15.36.385, 15.36.390, 15.36.395, 15.36.400, 15.36.405, 15.36.410, 15.36.415, 15.36.425, 15.36.430, 15.36.440, 15.36.460, 15.36.510, 15.36.540, 15.36.550, 15.36.590, and 15.36.900; and prescribing penalties.

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

PART I DEFINITIONS

NEW SECTION. Sec. 101. This chapter is intended to enact state legislation that safeguards the public health and promotes public welfare by: (1) Protecting the consuming public from milk or milk products that are: (a) Unsafe; (b) produced under unsanitary conditions; (c) do not meet bacterial standards under the PMO; or (d) below The Quality Standards under Title 21 C.F.R. or administrative rules and orders adopted under this chapter; and (2) requiring licensing of all aspects of the dairy production and processing industry.

Sec. 102. RCW 15.32.010 and 1989 c 354 s 1 are each amended to read as follows:

For the purpose of this chapter (~~(15.32 RCW)~~):

~~("Supervisor" means the supervisor of the dairy and food division;~~

~~"Dairy" means a place where milk from one or more cows or goats is produced for sale;~~

~~"Creamery" means a structure wherein milk or cream is manufactured into butter for sale;~~

~~"Milk plant" means a structure wherein milk is bottled, pasteurized, clarified, or otherwise processed;~~

~~"Cheese factory" means a structure where milk is manufactured into cheese;~~

~~"Factory of milk products" means a structure, other than a creamery, milk plant, cheese factory, milk condensing plant or ice cream factory, where milk or any of its products is manufactured, changed, or compounded into another article, or where butter is cut or wrapped, except freezing of ice cream from a mix compounded in a licensed creamery, milk plant, cheese factory, milk condensing plant or ice cream factory;~~

~~"Milk condensing plant" means a structure where milk is condensed or evaporated;~~

~~"Ice cream factory" means a structure which complies with the sanitary requirements of RCW 15.32.080, where ice cream mix is produced for sale or distribution, and may include freezing such mix into ice cream;~~

~~"Counter ice cream freezer" means counter type freezing machines usually operated in retail establishments;~~

~~"Sterilized milk" means milk that has been heated under six pounds of steam pressure and maintained thereat for not less than twenty minutes;~~

~~"Modified milk" means milk that has been altered in composition to conform to special nutritional requirements;~~

~~"Milk product" means an article manufactured or compounded from milk, whether or not the milk conforms to the standards and definitions herein;~~

~~"Milk byproduct" means a product of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and includes skimmed milk, buttermilk, whey, casein, and milk powder;~~

~~"Butter" means the product made by gathering the fat of pasteurized milk or cream into a mass containing not less than eighty percent of milk fat, and which also contains a small portion of other milk constituents, with or without harmless coloring matter;~~

~~"Renovated butter" means butter that has been reduced to a liquid state by melting and drawing off the liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream, or other product of milk;~~

~~"Reworked butter" means the product obtained by mixing or rechurning butter made on different dates or at different places: PROVIDED, That the mixing of remnants from one day's churning or cutting with butter from the churning of the same creamery on the next day shall not make the product reworked butter;~~

~~"Butter substitute" means a compound of vegetable oils with milk fats or milk solids and all compounds of milk fats or milk solids with butter when the compound contains less than eighty percent of milk fat;~~

~~"Oleomargarine" means all manufactured substances, extracts, mixtures, or compounds, including mixtures or compounds with butter, known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and includes all lard and tallow extracts and mixtures and compounds of tallow, beef fat, suet,~~

~~lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter or calculated or intended to be sold as butter;~~

~~"Cheese" means any of the cheeses as described in Title 21 of the code of federal regulations part 133;~~

~~"Imitation cheese" means any article, substance, or compound, other than that produced from pure milk or from the cream from pure milk, which is made in the semblance of cheese and designed to be sold or used as a substitute for cheese. The use of salt, lactic acid, or pepsin, and harmless coloring matter in cheese shall not render the true product an imitation. Nothing herein shall prevent the use of pure skimmed milk in the manufacture of cheese;~~

~~"Milk vendor" or "milk dealer" means any person who sells, furnishes or delivers milk, skimmed milk, buttermilk, or cream in any manner.))~~

"Adulterated milk" means milk that is deemed adulterated under appendix L of the PMO.

"Aseptic processing" means the process by which milk or milk products have been subjected to sufficient heat processing and packaged in a hermetically sealed container so as to meet the standards of the PMO.

"Colostrum milk" means milk produced within ten days before or until practically colostrum free after parturition.

"DMO" means supplement I, the recommended sanitation ordinance for grade A condensed and dry milk products and condensed and dry whey, to the PMO published by the United States public health service, food and drug administration.

"Dairy farm" means a place or premises where one or more cows, goats, or other mammals are kept, a part or all of the milk or milk products from which is sold or offered for sale to a milk processing plant, transfer station, or receiving station.

"Dairy technician" means any person who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized.

"Department" means the state department of agriculture.

"Director" means the director of agriculture of the state of Washington or the director's duly authorized representative.

"Distributor" means a person other than a producer who offers for sale or sells to another, milk or milk products.

"Grade A milk processing plant" means any milk processing plant that meets all of the standards of the PMO to process grade A pasteurized milk or milk products.

"Grade A pasteurized milk" means grade A raw milk that has been pasteurized.

"Grade A raw milk" means raw milk produced upon dairy farms conforming with all of the items of sanitation contained in the PMO, in which the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter as determined in accordance with RCW 15.36.110.

"Grade A raw milk for pasteurization" means raw milk produced upon dairy farms conforming with all of the same items of sanitation contained in the PMO of grade A raw milk, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.110.

"Grade C milk" is milk that violates any of the requirements for grade A milk but that is not deemed to be adulterated.

"Homogenized" means milk or milk products which have been treated to ensure breakup of the fat globules to an extent consistent with the requirements outlined in the PMO.

"Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or other mammals.

"Milk hauler" means a person who transports milk or milk products in bulk to or from a milk processing plant, receiving station, or transfer station.

"Milk processing" means the handling, preparing, packaging, or processing of milk in any manner in preparation for sale as food, as defined in chapter 69.04 RCW. Milk processing does not include milking or producing milk on a dairy farm that is shipped to a milk processing plant for further processing.

"Milk processing plant" means a place, premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, aseptically processed, bottled, or prepared for distribution, except an establishment whose activity is limited to retail sales.

"Milk products" means the product of a milk manufacturing process.

"Misbranded milk" means milk or milk products that carries a grade label unless such grade label has been awarded by the director and not revoked, or that fails to conform in any other respect with the statements on the label.

"Official brucellosis adult vaccinated cattle" means those cattle, officially vaccinated over the age of official calthood vaccinated cattle, that the director has determined have been commingled with, or kept in close proximity to, cattle identified as brucellosis reactors, and have been vaccinated against brucellosis in a manner and under the conditions prescribed by the director after a hearing and under rules adopted under chapter 34.05 RCW, the administrative procedure act.

"Official laboratory" means a biological, chemical, or physical laboratory that is under the direct supervision of the state or a local regulatory agency.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the department, or a milk industry laboratory officially designated by the department for the examination of grade A raw milk for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues and bacterial limits.

"PMO" means the grade "A" pasteurized milk ordinance published by the United States public health service, food and drug administration.

"Pasteurized" means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature and time standards specified in the PMO.

"Person" means an individual, partnership, firm, corporation, company, trustee, or association.

"Producer" means a person or organization who operates a dairy farm and provides, sells, or offers milk for sale to a milk processing plant, receiving station, or transfer station.

"Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Ultrapasteurized" means the process by which milk or milk products have been thermally processed in accordance with the time and temperature standards of the PMO, so as to produce a product which has an extended shelf life under refrigerated conditions.

"Ungraded processing plant" means a milk processing plant that meets all of the standards of the PMO to produce milk products other than grade A milk or milk products.

"Wash station" means a place, facility, or establishment where milk tanker trucks are cleaned in accordance with the standards of the PMO.

All dairy products mentioned in this chapter mean those fit or used for human consumption.

Sec. 103. RCW 15.36.011 and 1989 c 354 s 13 are each amended to read as follows:

The director of agriculture(~~(;)~~) may:

(1) Adopt rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW, however the rules may not restrict the display or promotion of products covered under this section.

(2) By rule, (~~may~~) establish (~~and/or~~), amend, or both, definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products (~~promulgated~~) adopted by the federal food and drug administration. The director of agriculture, by rule, may likewise establish (~~and/or~~), amend, or both, definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of (~~RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600~~)

~~or chapter 15.32 RCW as enacted or hereafter amended~~) this chapter. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling(~~(:—PROVIDED, That~~)). The term "nondairy" may be used as an informative statement.

~~((The director may adopt any other rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW: PROVIDED, That these rules shall not restrict the display or promotion of products covered under this section.))~~

(3) By rule adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.600 as recodified by this act. The adoption of ~~((all rules provided for in this section shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of))~~ rules under this chapter, or the holding of a hearing in regard to a license issued or that may be issued under this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness.

**PART II
PERMITS AND LICENSES**

Sec. 201. RCW 15.36.080 and 1989 c 354 s 16 are each amended to read as follows:

It shall be unlawful for any person to transport, or to sell, or offer for sale, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in this chapter, who does not possess an appropriate ~~((permit))~~ license from the director.

~~((Every milk producer, milk distributor, milk hauler, and operator of a milk plant shall secure a permit to conduct such operation as defined in this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.~~

~~Such a permit may be temporarily suspended by the director upon violation by the holder of any of the terms of this chapter, or for interference with the director in the performance of his duties, or revoked after an opportunity for a hearing by the director upon serious or repeated violations.))~~

NEW SECTION. **Sec. 202.** Every milk producer must obtain a milk producer's license to operate as a milk producer as defined in this chapter. A milk producer's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee.

Sec. 203. RCW 15.32.110 and 1991 c 109 s 2 are each amended to read as follows:

~~((Every creamery, milk plant, shipping station, milk condensing plant, factory of milk products, and other person who receives or purchases milk or cream in bulk and by weight or measure or upon the basis of milk fat contained therein shall obtain annually a license to do so. The license shall be issued by the director upon payment of ten dollars and his being satisfied that the building or premises where the milk or cream is to be received is maintained in a sanitary condition in accordance with the provisions of this chapter, except, such license shall not be required of persons purchasing milk or cream for their own consumption nor of hotels, restaurants, boarding houses, eating houses, bakeries, or candy manufacturing plants.~~

~~The license shall expire annually on a date set by rule by the director, unless sooner revoked by the director, upon reasonable notice to the licensee, for a failure to comply with the provisions of this chapter, and the rules and regulations issued hereunder. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.))~~ A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on a date set by rule by the director. A milk

processing plant may choose to process (1) grade A milk and milk products, or (2) other milk products that are not classified grade A.

Only one license may be required to process milk; however, milk processing plants must obtain the necessary endorsements from the department in order to process products as defined for each type of milk or milk product processing. License fees shall be prorated if necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. The applicant shall include on the application the full name of the applicant for the license and the location of the milk processing plant he or she intends to operate and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable rules adopted under this chapter by the department, the applicant shall be issued a license or a renewal of a license.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. If a license holder wishes to engage in processing a type of milk product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of milk product only after the amendment has been approved by the department.

A licensee under this section shall not be required to obtain a milk ((vendor's)) distributor's license under this chapter or a food processing plant license under chapter 69.07 RCW.

Sec. 204. RCW 15.32.100 and 1991 c 109 s 1 are each amended to read as follows:

Every ~~((person who sells, offers or exposes for sale, barter, or exchanges any milk or milk product as defined by rule under chapter 15.36 RCW)) distributor~~ must have a milk ((vendor's)) distributor's license ~~((to do so))~~. The license shall not include retail stores or restaurants that purchase milk prepackaged or bottled elsewhere for sale at retail or establishments that sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of ten dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire annually on a date set by rule by the director, and ~~((may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof.))~~ license fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

NEW SECTION. Sec. 205. A milk hauler must obtain a milk hauler's license to conduct the operation under this chapter. A milk hauler's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee.

Sec. 206. RCW 15.32.580 and 1963 c 58 s 6 are each amended to read as follows:

~~((Any person who tests milk or cream or the fluid derivatives thereof, purchased, received, or sold on the basis of milk fat, nonfat milk solids, or other components contained therein, or who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized must hold))~~
A dairy technician must obtain a dairy technician's license to conduct operations under this chapter. Such license shall be limited to those functions which the licensee has been found qualified by examination to perform. Before issuing the license the director shall examine the applicant as to his or her qualifications for the functions for which application has been made.

Application for a license as a dairy technician shall be made upon forms provided by the director, and shall be filed with the department. The director may issue a temporary license to the applicant for such period as may be prescribed and stated in the license, not to exceed sixty days, but the license may not be renewed to extend the period beyond sixty days.

The initial application for a dairy technician's license must be accompanied by a license fee of ten dollars. If it is not necessary that an examination be given, the fee for renewal of the license is five dollars. For circumstance that require an examination the renewal fee is ten dollars. All dairy technicians' licenses shall expire biennially on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 207. RCW 15.32.590 and 1963 c 58 s 9 are each amended to read as follows:

Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk ~~((or cream))~~ and milk products bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a ~~((carbon))~~ copy of every original report of each test, weight, or grade made by him or her for a period of two months after making ~~((same, in a locked container, but subject to inspection at all times by the director or his agent))~~ the report. No unfair, fraudulent, or manipulated sample shall be taken or delivered for analysis.

NEW SECTION. Sec. 208. A wash station operator must obtain a milk wash station license to conduct the operation under this chapter for all wash stations separate from a milk processing plant. A milk wash station license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for such license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee.

Sec. 209. RCW 15.36.100 and 1961 c 11 s 15.36.100 are each amended to read as follows:

~~((Prior to the issuance of a permit and at least once every six months))~~ The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of ~~((sanitation))~~ grade requirement, he or she shall make a second inspection after a lapse of such time as he or she deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Any violation of the same requirement of this chapter on such reinspection shall call for immediate degrading or summary suspension of ((permit)) the license in accordance with the requirements of chapter 34.05 RCW.

One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk processing plant buildings, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

Every milk producer and distributor shall ~~((upon the request of the director permit him))~~ permit the director access to all parts of the establishment during the working hours of the producer or distributor, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every distributor shall furnish the director, upon his or her request, for official use only, samples of any milk product for laboratory analysis, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, together with a list of all sources, records of inspections and tests, and recording thermometer charts.

Sec. 210. RCW 15.36.490 and 1961 c 11 s 15.36.490 are each amended to read as follows:

Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle, or store, or in any place except a bottling or milk room especially used for that purpose.

Milk and milk products sold in the distributor's containers in quantities less than one gallon shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, hospitals, and similar establishments to sell or serve any milk or milk products except in the individual original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: PROVIDED, That this requirement shall not apply to cream consumed on the premises, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital, or similar establishment to sell or serve any milk or milk product which has not been maintained, while in its possession, at a temperature of ~~((fifty))~~ forty-five degrees Fahrenheit or less. If milk or milk products are stored in water for cooling, the pouring lip of the container shall not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the director.

The delivery of milk or milk products to and the collection of milk or milk products containers from residences in which cases of communicable disease transmissible through milk supplies exists shall be subject to the special requirements of the health officer.

~~((Homogenized milk or homogenized cream shall not be mixed with milk or cream which has not been homogenized if sold or offered for sale as fluid milk or cream.))~~

Sec. 211. RCW 15.36.500 and 1961 c 11 s 15.36.500 are each amended to read as follows:

Grade A milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter and the PMO: PROVIDED, That the director shall satisfy himself or herself that the authority having jurisdiction over the production and processing is properly enforcing such provisions.

PART III MILK GRADING

Sec. 301. RCW 15.36.470 and 1989 c 354 s 22 are each amended to read as follows:

No milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except grade A ~~((milk))~~ pasteurized milk, or grade A ~~((milk raw, and))~~ raw milk. The director may revoke the ~~((permit))~~ license of any milk distributor failing to qualify ~~((for one of the above grades))~~ as grade A pasteurized or grade A raw, or in lieu

thereof may degrade his or her product to grade C and permit its sale as other than fluid milk or grade A milk products during a period not exceeding thirty days ~~((or in emergencies during such longer period as he may deem necessary))~~. In the event of an emergency, the director may permit the sale of grade C milk for more than thirty days.

Sec. 302. RCW 15.36.070 and 1961 c 11 s 15.36.070 are each amended to read as follows:

No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, ~~((in the fluid state for direct consumption as such,))~~ any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in possession any adulterated, misbranded, or ungraded milk or milk products: PROVIDED, That in an emergency the sale of ungraded milk or milk products may be authorized by the director, in which case they shall be labeled "ungraded."

Adulterated, misbranded, and/or ungraded milk or milk products may be impounded and disposed of by the director.

Sec. 303. RCW 15.32.160 and 1981 c 321 s 1 are each amended to read as follows:

It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows ~~((or)),~~ goats, or other mammals affected with disease or of which the owner thereof has refused official examination and tests for disease: or

(2) Colostrum milk, ~~((meaning that produced within ten days before or seven days after parturition,))~~ except that colostrum milk from cows that have been tested for brucellosis within sixty days of parturition may be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk. Colostrum milk provided under this section is exempt from meeting the standards for grade A raw milk required by this chapter ~~((15.36 RCW))~~.

(3) The department of agriculture shall adopt rules to carry out this section. The rules shall include but not be limited to establishing standards requiring hyper-immunization.

Sec. 304. RCW 15.32.530 and 1989 c 354 s 11 are each amended to read as follows:

~~((An inspector who obtains))~~ The department, after obtaining a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send the result to the person from whom the sample was taken or to the person responsible for the condition of the milk.

PART IV

DAIRY FARMS AND MILK PROCESSING PLANTS—CLEANLINESS

Sec. 401. RCW 15.36.110 and 1989 c 354 s 17 are each amended to read as follows:

During ~~((each))~~ any consecutive six months ~~((period))~~ at least four samples of raw milk ~~((and cream))~~, raw milk for pasteurization, or both, from each dairy farm and ~~((each milk plant shall be taken on separate days))~~ raw milk for pasteurization, after receipt by the milk processing plant and prior to pasteurization, heat-treated milk products, and pasteurized milk and milk products from each grade A milk processing plant, shall be collected in at least four separate months and examined by the director: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of ~~((nonofficial laboratories which have been officially checked periodically and found satisfactory))~~ an officially designated laboratory. Samples of other milk products may be taken and examined by the director as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and other laboratory tests shall conform to the ~~((procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association))~~ requirements of the PMO. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration or for purposes of compliance. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director, upon his or her request, with the name of all distributors from whom their milk and milk products are obtained. ~~((Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him for such examinations.))~~

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products established in this chapter and rules adopted under this chapter, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the same standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days~~((, except sixty days must lapse before an official somatic cell count can be taken))~~. The director shall degrade or summarily suspend the ~~((grade A permit))~~ milk producer's license or milk processing plant license whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the same standard. A ~~((grade A permit))~~ milk producer's license or milk processing plant license shall

subsequently be reinstated in notice status upon receipt of sample results that are within the standard for which the suspension occurred.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this milk processing plant can again be sold as pasteurized milk or milk products.

Sec. 402. RCW 15.36.090 and 1961 c 11 s 15.36.090 are each amended to read as follows:

All bottles, cans, packages, and other containers, enclosing raw milk or any raw milk product defined in this chapter shall be plainly labeled or marked with (1) ~~((the name of the contents as given in the definitions of this chapter; (2) the grade of the contents; (3) the word "pasteurized" only if the contents have been pasteurized; (4)))~~ the word "raw" only if the contents are raw; ~~((5))~~ and (2) the name of the producer if the contents are raw, and the identity of the plant at which the contents were pasteurized if the contents are pasteurized ~~((; (6) the phrase "for pasteurization" if the contents are to be pasteurized; (7) in the case of vitamin D milk the designation "vitamin D milk," the source of the vitamin D and the number of units per quart; (8) the word "reconstituted" or "recombined" if included in the name of the product as defined in this chapter; (9) in the case of concentrated milk or milk products the volume or proportion of water to be added for recombining; (10) the words "skim milk solids added," and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk or milk products; PROVID- ED, That only the identity of the producer shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which immediately dumps, washes, and returns the cans to the producer)).~~

The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading.

Sec. 403. RCW 15.36.300 and 1989 c 354 s 19 are each amended to read as follows:

~~((Grade C raw milk is raw milk which violates any of the requirements of grade A raw milk.))~~ The director shall adopt rules setting standards and requirements for production of grade C milk and milk products.

Sec. 404. RCW 15.36.520 and 1989 c 354 s 23 are each amended to read as follows:

~~((No person who is affected with any disease in a communicable form or is a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment; and no dairy farm or milk plant shall employ in any such capacity any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any communicable~~

~~disease occurs, or who suspects that any employee has contracted any disease shall notify the health authority immediately.)~~ A dairy farm offering for sale milk for consumption as grade A raw milk and all milk processing plants must conform with the requirements for personnel health as contained in the PMO.

**PART V
DEPARTMENTAL ENFORCEMENT**

NEW SECTION. Sec. 501. A license issued under this chapter may be denied or suspended by the director upon violation by the holder of any of the terms of this chapter, for interference with the director in the performance of his or her duties, or if the holder has exhibited in the discharge of his or her functions negligence, misconduct, or lack of qualification. A license may be revoked after an opportunity for a hearing by the director upon serious or repeated violations or after the license has been suspended for thirty continuous days without correction of the items causing the suspension.

NEW SECTION. Sec. 502. The director may, subsequent to a hearing on the license, suspend or revoke a license issued under this chapter if the director determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or a lawful order of the director.

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available if requested under the provisions of this chapter.

(3) Refused the department access to a portion or area of a facility regulated under this chapter, for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with the applicable provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under section 209, 401, or 503 of this act.

NEW SECTION. Sec. 503. (1) If the director finds a milk processing plant operating under conditions that constitute an immediate danger to public health, safety, or welfare or if the licensee or an employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a conditions exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) If a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) If a license is summarily suspended, processing operations shall immediately cease. However, the director may reinstate the license if the

condition that caused the suspension has been abated to the director's satisfaction.

Sec. 504. RCW 15.32.610 and 1963 c 58 s 11 are each amended to read as follows:

No person shall employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician (~~(+ or refuse to allow or fail to assist the director or his agent in the examination of the reports referred to in RCW 15.32.590)).~~

~~((Whoever))~~ A person who violates the provisions of this section ~~((or RCW 15.32.590))~~ may be fined not less than ~~((twenty-five))~~ two hundred fifty nor more than one ~~((hundred))~~ thousand dollars, and his or her license ~~((hereunder))~~ issued under this chapter revoked or suspended subject to a hearing as provided under chapter 34.05 RCW.

Sec. 505. RCW 15.36.115 and 1993 c 212 s 1 are each amended to read as follows:

(1) If the results of an antibiotic, pesticide, or other drug residue test under RCW 15.36.110 are above the actionable level established in the ~~((pasteurized milk ordinance published by the United States public health service))~~ PMO and determined using procedures set forth in the ~~((current edition of "Standard Methods for the Examination of Dairy Products,")~~) PMO, a ~~((producer))~~ person holding a ~~((grade A permit))~~ milk producer's license 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))~~ license 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 hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, and, if so, 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 34.05 RCW. Tests performed for antibiotic, pesticide, or other drug residues by ~~((a state or certified industry))~~ an official laboratory or an officially designated 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, pesticide, or other drug 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, pesticide, or other drug 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, pesticide, or other drug 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))~~ Followup sampling and testing must be done in accordance with the requirements of the PMO.

Sec. 506. RCW 15.36.480 and 1961 c 11 s 15.36.480 are each amended to read as follows:

If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with ~~((RCW 15.36.100, 15.36.110, and 15.36.120 to 15.36.460, inclusive))~~ the provisions of this chapter, the director shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling thereof.

Any producer or distributor of milk or milk products the grade of which has been lowered by the director, ~~((and who is properly labeling his milk and milk products,))~~ or whose permit has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her permit.

Upon receipt of a satisfactory application, in case the lowered grade or the permit suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the permit on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.110 (as recodified by this act).

In case the lowered grade of the applicant's product or the permit suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by

the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he or she may deem necessary to assure himself or herself that the applicant is again complying with the higher grade requirements, and in case the findings justify, shall regrade the milk or milk products upward or reinstate the permit.

Sec. 507. RCW 15.36.107 and 1992 c 160 s 2 are each amended to read as follows:

(1) There is created a dairy inspection program advisory committee. The committee shall consist of nine members. The committee shall be appointed by the director from names submitted by dairy producer organizations or from handlers of milk products. The committee shall consist of four members who are producers of milk or their representatives, and four members who are handlers or their representatives, and one member who must be a producer-handler.

(2) The purpose of this advisory committee is to assist the director by providing recommendations regarding the dairy inspection program, that are consistent with the pasteurized milk ordinance. The advisory committee shall (a) review and evaluate the program including the efficiency of the administration of the program, the adequacy of the level of inspection staff, the ratio of inspectors to number of dairy farm inspections per year, and the ratio of inspectors to management employees; and (b) consider alternatives to the state program, which may include privatization of various elements of the inspection program.

(3) The committee shall meet as necessary to complete its work. Meetings of the committee are subject to the open public meetings act.

~~((4) Not later than October 15, 1992, the advisory committee shall issue a preliminary report of its findings to the dairy industry. The committee shall solicit comments from the dairy industry which shall be reflected in the committee's final report.~~

~~(5) Not later than December 1, 1992, the advisory committee shall report to the agricultural committees of the house of representatives and senate its recommendations for long term structure and funding of the dairy inspection program.))~~

Sec. 508. RCW 15.32.450 and 1961 c 11 s 15.32.450 are each amended to read as follows:

(1) It shall be unlawful for a person other than the ~~((registered))~~ owner ~~((thereof))~~, to possess for sale ~~(, barter, or use such a branded container, and possession by any junk dealer or vendor shall be prima facie evidence of possession for sale, barter, or use. When a branded container is in the possession of a person other than the registered owner, the director may seize and hold it until it is established to his satisfaction that such possession is lawful. No~~

~~person, other than the owner, shall deface or remove a brand, or adopt a registered brand of another, or use a branded container, except to transport dairy products to and from the owner of the container)) or barter or to use a container that is used to distribute packaged milk or milk products and that bears the name or trademark of an owner that has been properly registered.~~

(2) A person receiving packaged dairy products in containers bearing the registered name or trademark of the owner shall return the containers to the owner.

(3) When such a container is in the possession of a person other than the owner, the director may seize and hold it until it is established to the director's satisfaction that such possession is lawful. The director may seize such containers and return them to the owner, in which case the owner shall pay the expenses thereof. Neither the director nor a person who returns such containers shall be liable for containers lost in transportation.

Sec. 509. RCW 15.35.080 and 1993 c 345 s 4 are each amended to read as follows:

For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department or the director's 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 plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state or another state comprising one or more counties or parts thereof, where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk from cows as defined in ~~((RCW 15.36.011))~~ chapter 15.36 RCW and rules adopted ~~((thereunder))~~ under chapter 15.36 RCW;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in ~~((RCW 15.36.040))~~ chapter 15.36 RCW and rules adopted ~~((thereunder))~~ under chapter 15.36 RCW;

(a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and

(b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of

chapter 15.36 RCW or, if the director so provides by rule, a person who markets to a milk dealer milk produced under a grade A permit issued by another state;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers.

Sec. 510. RCW 15.36.120 and 1984 c 226 s 3 are each amended to read as follows:

Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in (~~RCW 15.36.120 through 15.36.460~~) this chapter, with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk product used in its preparation.

Sec. 511. RCW 15.36.595 and 1993 c 212 s 3 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~~) under this chapter 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 hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW. 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 34.05 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 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. 512. RCW 35A.69.010 and 1983 1st ex.s. c 46 s 177 and 1983 c 3 s 71 are each reenacted and amended to read as follows:

Every code city shall have the powers, perform the functions and duties and enforce the regulations prescribed by general laws relating to food and drugs for any class of city as provided by Title 69 RCW; relating to inspection of foods, meat, dairies, and milk as provided by ~~((RCW 15.36.560 and 15.36.510 and))~~ chapter 16.49A RCW; relating to water pollution control as provided by chapter 90.48 RCW; and relating to food fish and shellfish as provided by Title 75 RCW.

***NEW SECTION. Sec. 513.** The following acts or parts of acts are each repealed:

- (1) RCW 15.32.051 and 1989 c 354 s 2 & 1963 c 58 s 2;
- (2) RCW 15.32.060 and 1961 c 11 s 15.32.060;
- (3) RCW 15.32.070 and 1961 c 11 s 15.32.070;
- (4) RCW 15.32.080 and 1989 c 354 s 3 & 1961 c 11 s 15.32.080;
- (5) RCW 15.32.090 and 1961 c 11 s 15.32.090;
- (6) RCW 15.32.120 and 1969 ex.s. c 102 s 5 & 1961 c 11 s 15.32.120;
- (7) RCW 15.32.130 and 1961 c 11 s 15.32.130;
- (8) RCW 15.32.140 and 1989 c 354 s 5 & 1961 c 11 s 15.32.140;
- (9) RCW 15.32.150 and 1961 c 11 s 15.32.150;
- (10) RCW 15.32.220 and 1989 c 354 s 6 & 1961 c 11 s 15.32.220;
- (11) RCW 15.32.250 and 1961 c 11 s 15.32.250;
- (12) RCW 15.32.260 and 1961 c 11 s 15.32.260;
- (13) RCW 15.32.330 and 1961 c 11 s 15.32.330;
- (14) RCW 15.32.340 and 1961 c 11 s 15.32.340;
- (15) RCW 15.32.360 and 1961 c 11 s 15.32.360;

- (16) RCW 15.32.380 and 1961 c 11 s 15.32.380;
(17) RCW 15.32.430 and 1973 c 31 s 1 & 1961 c 11 s 15.32.430;
(18) RCW 15.32.440 and 1961 c 11 s 15.32.440;
(19) RCW 15.32.490 and 1961 c 11 s 15.32.490;
(20) RCW 15.32.500 and 1989 c 354 s 8 & 1961 c 11 s 15.32.500;
(21) RCW 15.32.510 and 1989 c 354 s 9 & 1961 c 11 s 15.32.510;
(22) RCW 15.32.520 and 1989 c 354 s 10 & 1961 c 11 s 15.32.520;
(23) RCW 15.32.540 and 1961 c 11 s 15.32.540;
(24) RCW 15.32.560 and 1961 c 11 s 15.32.560;
(25) RCW 15.32.570 and 1989 c 354 s 12 & 1961 c 11 s 15.32.570;
(26) RCW 15.32.582 and 1963 c 58 s 7 & 1961 c 11 s 15.32.582;
(27) RCW 15.32.584 and 1991 c 109 s 3, 1989 c 175 s 46, 1963 c 58 s 8,
& 1961 c 11 s 15.32.584;
(28) **RCW 15.32.590 and 1963 c 58 s 9 & 1961 c 11 s 15.32.590;**
(29) RCW 15.32.600 and 1963 c 58 s 10 & 1961 c 11 s 15.32.600;
(30) RCW 15.32.610 and 1963 c 58 s 11 & 1961 c 11 s 15.32.610;
(31) RCW 15.32.620 and 1961 c 11 s 15.32.620;
(32) RCW 15.32.630 and 1963 c 58 s 12 & 1961 c 11 s 15.32.630;
(33) RCW 15.32.660 and 1961 c 11 s 15.32.660;
(34) RCW 15.32.670 and 1961 c 11 s 15.32.670;
(35) RCW 15.32.680 and 1961 c 11 s 15.32.680;
(36) RCW 15.32.700 and 1961 c 11 s 15.32.700;
(37) RCW 15.32.740 and 1961 c 11 s 15.32.740;
(38) RCW 15.32.750 and 1961 c 11 s 15.32.750;
(39) RCW 15.32.755 and 1963 c 58 s 14;
(40) RCW 15.32.760 and 1961 c 11 s 15.32.760;
(41) RCW 15.32.770 and 1987 c 202 s 174 & 1961 c 11 s 15.32.770;
(42) RCW 15.32.780 and 1961 c 11 s 15.32.780;
(43) RCW 15.32.790 and 1961 c 11 s 15.32.790;
(44) RCW 15.36.020 and 1989 c 354 s 14 & 1961 c 11 s 15.36.020;
(45) RCW 15.36.030 and 1961 c 11 s 15.36.030;
(46) RCW 15.36.040 and 1961 c 11 s 15.36.040;
(47) RCW 15.36.055 and 1982 c 131 s 1;
(48) RCW 15.36.060 and 1989 c 354 s 15, 1984 c 226 s 2, & 1961 c 11 s
15.36.060;
(49) RCW 15.36.075 and 1969 ex.s. c 102 s 3;
(50) **RCW 15.36.090 and 1961 c 11 s 15.36.090;**
(51) RCW 15.36.140 and 1984 c 226 s 4, 1981 c 297 s 3, & 1961 c 11 s
15.36.140;
(52) RCW 15.36.155 and 1961 c 11 s 15.36.155;
(53) RCW 15.36.160 and 1961 c 11 s 15.36.160;
(54) RCW 15.36.165 and 1961 c 11 s 15.36.165;
(55) RCW 15.36.170 and 1961 c 11 s 15.36.170;
(56) RCW 15.36.175 and 1961 c 11 s 15.36.175;

- (57) RCW 15.36.180 and 1961 c 11 s 15.36.180;
- (58) RCW 15.36.185 and 1961 c 11 s 15.36.185;
- (59) RCW 15.36.190 and 1961 c 11 s 15.36.190;
- (60) RCW 15.36.195 and 1961 c 11 s 15.36.195;
- (61) RCW 15.36.200 and 1961 c 11 s 15.36.200;
- (62) RCW 15.36.205 and 1961 c 11 s 15.36.205;
- (63) RCW 15.36.210 and 1961 c 11 s 15.36.210;
- (64) RCW 15.36.215 and 1961 c 11 s 15.36.215;
- (65) RCW 15.36.220 and 1961 c 11 s 15.36.220;
- (66) RCW 15.36.225 and 1961 c 11 s 15.36.225;
- (67) RCW 15.36.230 and 1961 c 11 s 15.36.230;
- (68) RCW 15.36.235 and 1961 c 11 s 15.36.235;
- (69) RCW 15.36.240 and 1961 c 11 s 15.36.240;
- (70) RCW 15.36.245 and 1961 c 11 s 15.36.245;
- (71) RCW 15.36.250 and 1961 c 11 s 15.36.250;
- (72) RCW 15.36.255 and 1961 c 11 s 15.36.255;
- (73) RCW 15.36.270 and 1961 c 11 s 15.36.270;
- (74) RCW 15.36.280 and 1961 c 11 s 15.36.280;
- (75) RCW 15.36.320 and 1981 c 297 s 5 & 1961 c 11 s 15.36.320;
- (76) RCW 15.36.325 and 1961 c 11 s 15.36.325;
- (77) RCW 15.36.330 and 1961 c 11 s 15.36.330;
- (78) RCW 15.36.335 and 1961 c 11 s 15.36.335;
- (79) RCW 15.36.340 and 1961 c 11 s 15.36.340;
- (80) RCW 15.36.345 and 1961 c 11 s 15.36.345;
- (81) RCW 15.36.350 and 1961 c 11 s 15.36.350;
- (82) RCW 15.36.355 and 1961 c 11 s 15.36.355;
- (83) RCW 15.36.360 and 1961 c 11 s 15.36.360;
- (84) RCW 15.36.365 and 1961 c 11 s 15.36.365;
- (85) RCW 15.36.370 and 1961 c 11 s 15.36.370;
- (86) RCW 15.36.375 and 1961 c 11 s 15.36.375;
- (87) RCW 15.36.380 and 1961 c 11 s 15.36.380;
- (88) RCW 15.36.385 and 1961 c 11 s 15.36.385;
- (89) RCW 15.36.390 and 1961 c 11 s 15.36.390;
- (90) RCW 15.36.395 and 1961 c 11 s 15.36.395;
- (91) RCW 15.36.400 and 1961 c 11 s 15.36.400;
- (92) RCW 15.36.405 and 1961 c 11 s 15.36.405;
- (93) RCW 15.36.410 and 1961 c 11 s 15.36.410;
- (94) RCW 15.36.415 and 1961 c 11 s 15.36.415;
- (95) RCW 15.36.425 and 1991 c 3 s 1, 1989 c 354 s 20, 1979 c 141 s 22,
& 1961 c 11 s 15.36.425;
- (96) RCW 15.36.430 and 1961 c 11 s 15.36.430;
- (97) RCW 15.36.440 and 1961 c 11 s 15.36.440;
- (98) RCW 15.36.460 and 1989 c 354 s 21 & 1961 c 11 s 15.36.460;
- (99) RCW 15.36.510 and 1961 c 11 s 15.36.510;

(100) RCW 15.36.540 and 1989 c 354 s 24, 1969 ex.s. c 102 s 6 & 1961 c 11 s 15.36.540;

(101) RCW 15.36.550 and 1989 c 354 s 25, 1979 c 141 s 23, & 1961 c 11 s 15.36.550;

(102) RCW 15.36.590 and 1961 c 11 s 15.36.590; and

(103) RCW 15.36.900 and 1961 c 11 s 15.36.900.

*Sec. 513 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 514. The following sections shall be codified or recodified in the following order in chapter 15.36 RCW:

Section 101 of this act;

RCW 15.32.010;

RCW 15.36.011;

RCW 15.36.080;

Section 202 of this act;

RCW 15.32.110;

RCW 15.32.100;

Section 205 of this act;

RCW 15.32.580;

Section 208 of this act;

RCW 15.36.100;

RCW 15.36.490;

RCW 15.36.500;

RCW 15.36.120;

RCW 15.32.160;

RCW 15.36.150;

RCW 15.36.470;

RCW 15.36.070;

RCW 15.32.530;

RCW 15.36.110;

RCW 15.36.260;

RCW 15.36.265;

RCW 15.36.420;

RCW 15.36.300;

RCW 15.32.410;

RCW 15.32.420;

RCW 15.32.450;

RCW 15.32.460;

RCW 15.36.520;

RCW 15.36.530;

Section 501 of this act;

Section 502 of this act;

Section 503 of this act;

RCW 15.32.610;

RCW 15.36.115;

RCW 15.36.480;
RCW 15.32.550;
RCW 15.36.595;
RCW 15.36.600;
RCW 15.32.710;
RCW 15.32.720;
RCW 15.32.730;
RCW 15.36.005;
RCW 15.32.900;
RCW 15.32.910;
RCW 15.36.105; and
RCW 15.36.107.

NEW SECTION. Sec. 515. Sections 101, 202, 205, 208, and 501 through 503 of this act are each added to chapter 15.36 RCW and shall be codified pursuant to section 514 of this act.

Passed the Senate February 9, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 28, 1994.

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

"I am returning herewith, without my approval as to sections 513 (28) and 513 (50), Substitute Senate Bill No. 6096 entitled:

"AN ACT Relating to milk and milk products;"

Section 513 of Substitute Senate Bill No. 6096 repeals 103 separate sections of the RCW. The 103 individual sections of law repealed in section 513 are contained in a single section of the bill for clerical ease. Two of these repealers, sections 513 (28) and 513 (50), would repeal sections of the code which are amended elsewhere in Substitute Senate Bill No. 6096.

Section 207 of the bill amends RCW 15.32.590 and makes substantive changes to the requirements for sampling, testing, weighing, and grading done by licensed dairy technicians by expanding the requirement for these actions from "milk or cream" to "milk and milk products" and specifying that no unfair, fraudulent, or manipulated sample shall be taken or delivered for analysis. This same RCW section is repealed in section 513 (28).

Section 402 of the bill amends RCW 15.36.090 and makes substantive changes to labeling and marking requirements and specifically provides requirements concerning raw milk products and pasteurizing. This same RCW section is repealed in section 513 (50).

Veto of these discreet repealer sections cures the problem of internal inconsistency in Substitute Senate Bill No. 6096 and clarifies the substantive intent of this bill. For these reasons, I have vetoed sections 513 (28) and 513 (50) of Substitute Senate Bill No. 6096.

With the exception of sections 513 (28) and 513 (50), Substitute Senate Bill No. 6096 is approved."

CHAPTER 144

[Senate Bill 6146]

FILM AND VIDEO PRODUCTION STUDIO

AN ACT Relating to economic diversification through film and video production; amending RCW 43.330.090; making an appropriation; and providing an effective date.

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

Sec. 1. RCW 43.330.090 and 1993 c 280 s 12 are each amended to read as follows:

(1) The department shall work with private sector organizations, local governments, local economic development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall ensure that the state continues to pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department shall work to provide a balance of tourism activities throughout the state and during different seasons of the year. In addition, the department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(3) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

- (f) Promoting cooperative market development activities;
- (g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and
- (h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity.

By January 10th of each year, the department shall report in writing on its targeted sector programs to the appropriate legislative economic development committees. The department's report shall include an appraisal of the sector, activities the department has undertaken to assist in the development of each sector, and recommendations to the legislature regarding activities that the state should implement but are currently beyond the scope of the department's program or resources.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1994, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1994.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 145

[Engrossed Senate Bill 6158]

TUBERCULOSIS

AN ACT Relating to tuberculosis; and adding new sections to chapter 70.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 70.28 RCW to read as follows:

(1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the health and welfare of the public, subject to the constitutional protection required under the federal and state Constitutions. Nothing in this chapter shall be construed as in

any way limiting the broad powers of health officials to act as necessary to protect the public health.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70.28 RCW to read as follows:

(1) The state board of health shall adopt rules establishing the requirements for:

(a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;

(b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW 70.28.031 and 70.05.070 that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis.

(3) The board shall adopt rules under subsection (1) of this section by December 31, 1994.

Passed the Senate March 5, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 146

[Senate Bill 6221]

GENETIC TESTING TO DETERMINE PARENTAGE

AN ACT Relating to genetic testing to determine parentage; and amending RCW 26.26.100, 26.26.110, 26.26.120, 26.26.140, and 74.20A.056.

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

Sec. 1. RCW 26.26.100 and 1984 c 260 s 32 are each amended to read as follows:

(1) The court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests or genetic tests of blood, tissues, or other bodily fluids. If an alleged father objects to a proposed order requiring him to submit to paternity blood or genetic tests, the court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The court shall order blood or genetic tests if it

appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood or genetic testing appointed by the court. The expert's verified report identifying the blood or genetic characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood or genetic samples tested is admissible to establish the chain of custody. The court may consider published sources as aids to interpretation of the test results.

(2) The court, upon request by a party, shall order that additional blood or genetic tests be performed by the same or other experts qualified in paternity blood or genetic testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood or genetic test results. The court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

(3) In all cases, the court shall determine the number and qualifications of the experts.

Sec. 2. RCW 26.26.110 and 1984 c 260 s 33 are each amended to read as follows:

Evidence relating to paternity may include:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) An expert's opinion concerning the impossibility or the statistical probability of the alleged father's paternity based upon blood or genetic test results;

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) All other evidence relevant to the issue of paternity of the child.

Sec. 3. RCW 26.26.120 and 1984 c 260 s 34 are each amended to read as follows:

(1) An action under this chapter is a civil action governed by the rules of civil procedures. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that the witness may be incriminated thereby, and if a prosecuting attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, the witness would have been privileged to withhold the answer given or the evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify pursuant to this section. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) In an action against an alleged father, evidence offered by the alleged father with respect to a man who has not been joined as a party concerning the nonparty's sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the nonparty has undergone and made available to the court blood or genetic tests, ~~((including the human leukocyte antigen (HLA) test or other tests of comparable exclusionary power,))~~ the results of which do not exclude the possibility of the nonparty's paternity of the child.

(5) The trial shall be by the court without a jury.

Sec. 4. RCW 26.26.140 and 1984 c 260 s 35 are each amended to read as follows:

The court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including blood or genetic test costs, to be paid by the parties in proportions and at times determined by the court. The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185.

Sec. 5. RCW 74.20A.056 and 1989 c 55 s 3 are each amended 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 or genetic 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 or genetic 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 or genetic 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 or genetic 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 or genetic 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.

Passed the Senate February 15, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 147

[Second Substitute Senate Bill 6237]

VETERAN ESTATE MANAGEMENT PROGRAM

AN ACT Relating to the veteran estate management program; amending RCW 73.04.130 and 73.36.050; adding new sections to chapter 73.04 RCW; and repealing RCW 73.36.070.

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

NEW SECTION. Sec. 1. A new section is added to chapter 73.04 RCW to read as follows:

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

(1) "Director" means the director of the department of veterans affairs or the director's designee.

(2) "Veteran estate management program" means the program under which the director serves as administrator or federal fiduciary of an incapacitated veteran's estate or incapacitated veteran's dependent's estate, or the executor of a deceased veteran's estate.

Sec. 2. RCW 73.04.130 and 1979 c 64 s 1 are each amended to read as follows:

The director (~~(of the department of veterans affairs or his designee)~~) is authorized to (~~(act as executor under the last will, or as administrator of the estate of any deceased veteran, or as the guardian or duly appointed federal~~

~~fiduciary of the estate of any insane or incompetent veteran, or as guardian or duly appointed federal fiduciary of the estate of any person~~) implement a veteran estate management program and manage the estate of any incapacitated veteran or incapacitated veteran's dependent who:

~~(1) Is a bona fide resident of the state of Washington ((and who is certified by the veterans' administration as having money due from the veterans' administration,)); and~~

~~(2) The United States department of veterans affairs or the social security administration has determined that the payment of ((which)) benefits or entitlements is dependent upon the appointment of a ((guardian or other type fiduciary. No fee shall be allowed or paid to the director or his designee for acting as executor, administrator, guardian or fiduciary, or to any attorney for the director or his designee)) federal fiduciary or representative payee; and~~

~~(3) Requires the services of a fiduciary and a responsible family member is not available; or~~

~~(4) Is deceased and has not designated an executor to dispose of the estate.~~

The director ~~((or his designee,))~~ or any other interested person may petition the appropriate ~~((court))~~ authority for the appointment ~~((of the director or his designee. Any such petition by the director or his designee shall be without cost and without fee))~~ as fiduciary for an incapacitated veteran or as the executor of the deceased veteran's estate. If appointed, the director ~~((or his designee))~~ may serve without bond. This section shall not affect the prior right to act as administrator of a ~~((veterans'))~~ veteran's estate of such persons as are denominated in RCW 11.28.120 (1) and (2), nor shall this section affect the appointment of executor made in the last will of any veteran ~~((, nor shall this section apply to estates larger than fifteen thousand dollars)).~~

NEW SECTION. Sec. 3. A new section is added to chapter 73.04 RCW to read as follows:

(1) The director may place a claim against the estate of an incapacitated or deceased veteran who is a veteran estate management program client. The claim shall not exceed the amount allowed by rule of the United States department of veterans affairs and charges for reasonable expenses incurred in the execution or administration of the estate. The director shall waive all or any portion of the claim if the payment or a portion thereof would pose a hardship to the veteran.

(2) Any fees collected shall be deposited in the state general fund—local and shall be available for the cost of managing and supporting the veteran estate management program. All expenditures and revenue control shall be subject to chapter 43.88 RCW.

Sec. 4. RCW 73.36.050 and 1951 c 53 s 5 are each amended to read as follows:

(1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized

refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration.

(5) All proceedings under this chapter shall be governed by the provisions of chapters 11.88 and 11.92 RCW which shall prevail over any conflicting provisions of this chapter.

NEW SECTION. Sec. 5. A new section is added to chapter 73.04 RCW to read as follows:

The director or any other department of veterans affairs employee shall not serve as guardian for any resident at the Washington state veterans' homes.

NEW SECTION. Sec. 6. RCW 73.36.070 and 1951 c 53 s 7 are each repealed.

Passed the Senate March 1, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 148

[Substitute Senate Bill 6264]

COASTAL ECOSYSTEMS—ENDANGERED FISH SPECIES— INTERSTATE COMPACT AUTHORIZED

AN ACT Relating to an interstate compact for restoration of native salmonid fish runs; adding new sections to chapter 75.40 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.40 RCW to read as follows:

The state of Washington is authorized to enter into an interstate compact or compacts with all or any of the states of California, Idaho, and Oregon to protect and restore coastal ecosystems of these states to levels that will prevent the need for listing any native salmonid fish species under the federal endangered species act of 1973, as amended, or under any comparable state legislation.

NEW SECTION. Sec. 2. A new section is added to chapter 75.40 RCW to read as follows:

Until such time as the agencies in California, Idaho, Oregon, and Washington present a final proposed interstate compact for enactment by their respective legislative bodies, the governor may establish cooperative agreements with the states of California, Idaho, and Oregon that allow the states to coordinate their individual efforts in developing state programs that further the region-wide goals set forth under section 1 of this act.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1994.

Passed the Senate February 14, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 149

[Substitute Senate Bill 6509]

IMPAIRED INSURERS—GUARANTY ASSOCIATION AUTHORITY

AN ACT Relating to permitting the Washington life and disability insurance guaranty association to act in the case of impaired insurers; and amending RCW 48.32A.010, 48.32A.020, 48.32A.030, 48.32A.050, 48.32A.060, 48.32A.070, 48.32A.080, and 48.32A.120.

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

Sec. 1. RCW 48.32A.010 and 1990 c 51 s 1 are each amended to read as follows:

The purpose of this chapter is the creation of funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the state of Washington, to be used to assure to the extent prescribed herein the performance of the insurance contractual obligations of insurers becoming impaired or insolvent to residents of this state, and to promote thereby the stability of domestic insurers. In the judgment of the legislature, the foregoing purpose not being capable of accomplishment by a corporation created under general laws, the creation of the nonprofit association hereinafter in this chapter described is deemed essential for the protection of the general welfare.

Sec. 2. RCW 48.32A.020 and 1990 c 51 s 2 are each amended to read as follows:

This chapter shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of ~~((liquidating))~~ impaired or insolvent insurers, other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) To all such policies and contracts of a domestic, foreign, or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time ~~((of entry of the order of liquidation of the insolvent))~~ the insurer becomes an impaired or insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident ~~((of and domiciled within this state. This chapter shall apply only as to the insurance or annuities thereunder of individuals who are residents of and domiciled within this state. The place of residence or domicile shall be determined as of the date of entry of the order of liquidation against the insurer))~~.

(2) To policies and contracts only of impaired or insolvent insurers ~~((with respect to which an order of liquidation is entered after May 21, 1971))~~.

(3) The obligations of the association created under this chapter shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the impaired or insolvent insurer ~~((at the time of entry of the order of liquidation))~~. However, the liability of the association shall in no event exceed:

(a) With respect to any one life, regardless of the number of policies or contracts:

(i) Five hundred thousand dollars in life insurance death benefits, including any net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars in disability insurance benefits, including any net cash surrender and net cash withdrawal values; or

(iii) Five hundred thousand dollars in the present value of allocated annuity benefits and annuities established under section 403(b) of the United States internal revenue code.

The association shall not be liable to expend more than five hundred thousand dollars in the aggregate with respect to any one individual under this subsection; or

(b) With respect to any one contract owner covered by any unallocated annuity contract, including governmental retirement plans established under section 401 or 457 of the United States internal revenue code, five million dollars in benefits, irrespective of the number of such contracts held by that contract owner.

(4) This chapter shall not apply to:

(a) Fraternal benefit societies;

(b) Health care service contractors;

(c) Insurance or liability assumed by the ~~((liquidating))~~ impaired or insolvent insurer under a contract of reinsurance other than bulk reinsurance;

(d) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; or

(e) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union, association of natural persons benefit plan, or a government lottery.

Sec. 3. RCW 48.32A.030 and 1990 c 51 s 3 are each amended to read as follows:

Within the meaning of this chapter:

(1) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).

(2) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge constitutes a legal liability of the insurer so assessed.

(3) "Association" means "the Washington life and disability insurance guaranty association(("))."

~~((2))~~ (4) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

~~((3))~~ (5) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090.

(6) "Commissioner" means the insurance commissioner of this state.

~~((4) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.~~

~~(5) "Liquidating")~~ (7) "Contributor" means an insurer that has paid an assessment.

(8) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

(9) "Impaired insurer" means an insurer that, after the effective date of this act, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation, or a substantially similar order, by a court of competent jurisdiction.

(10) "Insolvent insurer" means an insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction.

~~((6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.~~

~~(7) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).~~

~~(8) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge shall constitute a legal liability of the insurer so assessed.~~

~~(9) "Contributor" means an insurer which has paid an assessment.~~

~~(10) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090.)~~

(11) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

(12) "Resident" means a person who resides and is domiciled in this state at the time an insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be resident of only one state, which in the case of a person other than an individual is its principal place of business.

(13) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

Sec. 4. RCW 48.32A.050 and 1971 ex.s. c 259 s 5 are each amended to read as follows:

The association shall have the power:

(1) To use a seal, to contract, to sue and be sued and, in addition, possess and exercise all powers necessary or convenient for the purposes of this chapter.

(2) With the approval of the commissioner and as provided in RCW 48.32A.060, to assume, reinsure, or guarantee or cause to be assumed, reinsured, or guaranteed, partially or wholly, any or all of the policies or contracts of any ~~((liquidating))~~ impaired or insolvent domestic life or disability insurer or any policy or contract to which this chapter applies, and to make available from a fund, the creation of which is hereinafter in RCW 48.32A.080 provided, such sum or sums as may be necessary for such purpose.

(3) To carry out the provisions of this section, the association shall have, and may exercise, all necessary rights, powers, privileges, and franchises of a domestic insurer, except that it shall not be authorized to issue contracts or policies unless such contracts or policies are pursuant to contracts and policies representing obligations in whole or in part of the ~~((liquidating))~~ impaired or insolvent insurer or of the association.

(4) To borrow money for the purposes of the fund, either with or without security, and pledge such assets in a fund as security for such loans, and in connection therewith, rehypothecate any securities or collateral pledged to it by an insurer. Any notes or other evidence of indebtedness of the association shall be legal investments for domestic insurers and may be carried as admitted assets.

(5) To collect or enforce by legal proceedings, if necessary, the payment of all assessments for which any insurer may be liable under this chapter; and to collect any other debt or obligation due to the association or a fund created in this chapter.

(6) To make bylaws and regulations for the conduct of the affairs of the association, not inconsistent with this chapter.

Sec. 5. RCW 48.32A.060 and 1990 c 51 s 4 are each amended to read as follows:

(1) ~~((The association shall,))~~ Subject to such terms and conditions as it may impose with the approval of the commissioner, as to an insolvent domestic, foreign, or alien life or disability insurer the association shall, and as to an

impaired domestic, foreign, or alien life or disability insurer the association may, for a resident, assume, reinsure, or guarantee the performance of the policies and contracts (, for a resident of the state, of any domestic life or disability)) of that insurer ((with respect to which an order of liquidation has been entered by any court of general jurisdiction in the state of Washington)), and shall have power to receive, own, and administer any assets acquired in connection with such assumption, reinsurance, or guaranty. The association, as to any such policy or contract under which there is no default in payment of premiums subsequent to such assumption, reinsurance, or guaranty, shall make or cause to be made prompt payment of the benefits due under the terms of the policy or contract.

~~(2) ((The association shall make or cause to be made payment of the death, endowment, or disability insurance or annuity benefits due under the terms of each policy or contract insuring the life or health of, or providing annuity or other benefits for, a resident of this state which was issued or assumed by a foreign or alien insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction in the state or country of its domicile.~~

(3)) (a) If the association acts under this section with respect to an impaired insurer, the impaired insurer shall not solicit or accept new business in Washington or have any suspended certificate of authority restored until all payments of or on account of the impaired insurer's contractual obligations by the association, along with all expenses thereof and interest at a rate determined by the commissioner on all such payments and expenses, are repaid to the guaranty association or a plan of repayment by the impaired insurer is approved by the commissioner and the association.

(b) The association may act under this section as to an impaired domestic insurer only if that insurer has been placed under an order of rehabilitation or the like by a court of competent jurisdiction in this state. The association may act under this section as to an impaired foreign or alien insurer only if that insurer has been prohibited from soliciting or accepting new business in this state, its certificate of authority has been suspended or revoked in this state, and an order for rehabilitation, conservation of assets, or liquidation, or the like, has been entered by a court of competent jurisdiction in its state of domicile or in Washington.

(3) In determining benefits to be paid with respect to the policies and contracts of a particular ((liquidating)) impaired or insolvent insurer the board may give due consideration to amounts reasonably recoverable or deductible because of the contingent liability, if any, of policyholders of the insurer (if a mutual insurer) or recoverable because of the assessment liability, if any, of the insurer's stockholders (if a stock insurer).

(4) With respect to an insolvent domestic insurer, the board shall have power to petition the court in which the delinquency proceedings are pending for, and the court shall have authority to order and effectuate, such modifications in the terms, benefits, values, and premiums thereafter to be in effect of policies

and contracts of the insurer as may reasonably be necessary to effect a bulk reinsurance of such policies and contract in a solvent insurer. In the event, after the entry of an order of liquidation, an assessment on the members is necessary to increase the assets of the insolvent company to an extent that a bulk reinsurance of such policies may be effected, the court shall have authority to order such assessment.

(5) In addition to any other rights of the association acquired by assignment or otherwise, the association shall be subrogated to the rights of any person entitled to receive benefits under this chapter against the (~~(liquidating)~~) impaired or insolvent insurer, or the receiver, rehabilitator, liquidator, or conservator, as the case may be, under the policy or contract with respect to which a payment is made or guaranteed, or obligation assumed by the association pursuant to this section, and the association may require an assignment to it of such rights by any such persons as a condition precedent to the receipt by such person of payment of any benefits under this chapter. The rights of the association to payment from the impaired or insolvent insurer, or its receiver, rehabilitator, liquidator, or conservator, are subordinate to those of the persons protected under this chapter. Where the association is entitled to payment because of subrogation or assignment or because of its status as a creditor, no such payment may be made to it until either (a) the person from whom its claim arises has received benefits practically equivalent to all the benefits to which he or she is entitled under the terms of the policy or contract, or (b) it appears that amounts not paid to the association would instead be paid entirely or disproportionately to persons other than residents protected under this chapter.

(6) For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the (~~(liquidating)~~) impaired or insolvent insurer to the extent of assets attributable to covered policies and contracts reduced by any amounts to which the association is entitled as a subrogee. All assets of the (~~(liquidating)~~) impaired or insolvent insurer attributable to covered policies and contracts shall be used to continue all covered policies and contracts and pay all contractual obligations of the (~~(liquidating)~~) impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies and contracts, as used in this subsection, are those in that proportion of the assets which the reserves that should have been established for such policies and contracts bear to the reserves that should have been established for all insurances written by the (~~(liquidating)~~) impaired or insolvent insurer.

(7) The association shall have the power to petition the superior court for an order appointing the commissioner as receiver of a domestic insurer upon any of the grounds set forth in RCW 48.31.030.

Sec. 6. RCW 48.32A.070 and 1971 ex.s. c 259 s 7 are each amended to read as follows:

Whenever a guaranty or payment of proceeds or benefits of a policy or contract otherwise provided for under this chapter is also provided for by a

similar law of another jurisdiction, there shall be only one recovery of values or benefits, and the association or ~~((their))~~ other entity established by such law in the domiciliary jurisdiction or state of entry of the ~~((liquidating))~~ impaired or insolvent insurer shall be solely responsible for such guaranty and payment.

Sec. 7. RCW 48.32A.080 and 1990 c 51 s 5 are each amended to read as follows:

(1) For purposes of administration and assessment, the association shall establish and maintain three guaranty fund accounts:

(a) The life insurance and annuity account, which shall be divided into three subaccounts:

(i) The life insurance subaccount;

(ii) The allocated annuity subaccount; and

(iii) The unallocated annuity subaccount which shall include contracts qualified under section 403(b) of the United States internal revenue code;

(b) The disability insurance account; and

(c) The general account.

(2) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessment after thirty days written notice to the member insurers before payment is due. The board may charge reasonable interest for delinquent payment of the assessment.

(3)(a) The amount of any assessment for each account and subaccount shall be determined by the board, and shall be divided among the accounts and subaccounts in the proportion that the premiums received by the ~~((liquidating))~~ impaired or insolvent insurer on the policies or contracts covered by each account and subaccount bears to the premiums received by such insurer on all covered policies and contracts.

(b) Assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account or subaccount bears to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to a particular ~~((liquidating))~~ impaired or insolvent insurer shall not be made until necessary, in the board's opinion, to implement the purposes of this chapter; and in no event shall such an assessment be made with respect to ~~((such))~~ an insolvent insurer until an order of liquidation has been entered against the insurer by a court of competent jurisdiction of the insurer's state or country of domicile. Computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determination may not always be possible.

(d) The board may make an assessment of up to one hundred fifty dollars for each member insurer to be deposited in the general account and used for administrative and general expenses in carrying out the provisions of this chapter.

(4)(a) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount shall not in any one calendar year exceed two percent and for the disability account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the ~~((entry of the order of liquidation against the liquidating))~~ year in which the insurer became an impaired or insolvent insurer.

(b) The board may provide a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3) of this section, the board shall access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in (a) of this subsection.

(5) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against a member insurer 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 member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year an amount sufficient to carry out the responsibilities of the association with respect to such account, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(6) The amount in a fund shall be kept at such a sum as in the opinion of the board will enable the association to meet the immediate obligations and liabilities of such fund. Whenever in the opinion of the board the amount in a fund is in excess of such immediate obligations and liabilities, with the approval of the commissioner the association may distribute such excess by retirement of certificates previously issued against the fund. Such distribution shall be made pro rata upon the basis of outstanding certificates, except that by unanimous consent of all directors and with the approval of the commissioner any other reasonable method of retirement of such certificates may be adopted.

(7) As used in this section, "premiums" are those for the calendar year preceding the ~~((entry of the order of liquidation as to a particular liquidating))~~ year in which the insurer became an impaired or insolvent insurer, and shall be direct gross insurance premiums and annuity considerations received on policies

and contracts to which this chapter applies, less return premiums and considerations and less dividends paid or credited to policyholders.

(8) Upon dissolution of a fund by the repeal of this chapter or otherwise, the fund shall be distributed in the same manner as is provided for the repayment or retirement of certificates. If the amount in the fund at the time of dissolution is in excess of outstanding certificates issued against the fund, such excess shall be distributed among contributing member insurers in such equitable manner as is approved by the commissioner.

Sec. 8. RCW 48.32A.120 and 1971 ex.s. c 259 s 12 are each amended to read as follows:

(1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed or existing under such order shall have a right to recover, and upon request of the board or without such request shall take such action as he or she deems advisable to recover, on behalf of the insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, at any time during the five years preceding the petition for liquidation or rehabilitation of the insurer subject to the limitations of subsections (2) through (4) of this section.

(2) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate in control of the insurer at the time a distribution was paid shall be liable up to the amount of distribution ~~((he))~~ that person received. Any person who was an affiliate in control of the insurer at the time a distribution was declared shall be liable up to the amount of distribution ~~((he))~~ the person would have received if it had been paid immediately. If two persons are liable with respect to the same distribution they shall be jointly and severally liable.

(4) The maximum amount recoverable by the receiver under this section shall be the amount needed in excess of all other available assets to pay the contractual obligations of the insurer.

(5) If any person liable under subsection (3) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Passed the Senate February 15, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 150

[Senate Bill 6532]

CRIMINALLY INSANE PERSONS—RELEASE CONDITIONS

AN ACT Relating to release of criminally insane persons; and adding a new section to chapter 10.77 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 10.77 RCW to read as follows:

No court may, without a hearing, enter an order conditionally releasing or authorizing the furlough of a person committed under this chapter, unless the secretary has recommended the release or furlough. If the secretary has not recommended the release or furlough, a hearing shall be held under RCW 10.77.150.

Passed the Senate February 14, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 151

[Substitute Senate Bill 6538]

BOATING SAFETY—FIRE PREVENTION PROGRAM

AN ACT Relating to boating safety education; amending RCW 88.12.500 and 43.51.400; adding a new section to chapter 88.12 RCW; and repealing RCW 88.12.510, 88.12.520, 88.12.530, and 88.12.540.

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

Sec. 1. RCW 88.12.500 and 1993 c 469 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) Washington state has the greatest length of marine shoreline miles of the lower forty-eight states;

(b) Such marine waters and the extensive freshwater lakes and rivers of the state provide innumerable recreational opportunities, and support a state recreational vessel population that is one of the largest in the country;

(c) Many of Washington's popular recreational waters are remote from population centers and thus remote from emergency health care facilities;

(d) Washington's climate in the western portion of the state, in which its marine recreational waters lie, is cool and wet for much of the year. Much of the state's recreational vessel activity is conducted in the late fall and winter months in connection with fishing activities. For these reasons the great majority of Washington vessels are equipped with heating devices. These appliances are in use for a much greater portion of the boating season than in other states, and are predominantly fueled by liquid petroleum gas;

(e) Current state and federal standards governing heating and cooking appliances on vessels that are fueled by liquid petroleum gas do not adequately protect against undetected gas leaks. Such gas leaks have led to explosions on Washington waters, causing loss of life and property damage;

(f) ~~((A vessel equipped with leak detection and warning devices will greatly reduce the potential for the ignition of liquid petroleum gas which may have escaped into the hold of the vessel, yet such devices are not currently required either by federal standards or Washington law))~~ The commission coordinates a state-wide program of boating safety education to communicate accident prevention information to boaters at risk of fires, explosions, and other hazards, and administers a boating accident reporting program to assess the effectiveness of accident prevention measures.

(2) It is the intent of the legislature to address the state's unique local circumstances regarding inadequate protection of Washington's boaters from undetected leaks of liquid petroleum gas-fueled appliances by ~~((requiring leak detection and warning devices to be placed on those vessels most at risk. It is further the intent of the legislature in this action to exercise the authority to address such local circumstances recognized in federal laws which otherwise preempt the field of establishing safety standards for vessels))~~ incorporating into the boating safety program an intensified boating fire prevention program with special emphasis on preventing fires and carbon monoxide poisoning caused by auxiliary fuels and appliances.

NEW SECTION. **Sec. 2.** A new section is added to chapter 88.12 RCW to read as follows:

The commission shall undertake a state-wide recreational boating fire prevention education program concerning the safe use of marine fuels and electrical systems and the hazards of carbon monoxide. The boating fire prevention education program shall provide for the distribution of fire safety materials and decals warning of fire hazards and for educational opportunities to educate boaters on the safety practices needed to operate heaters, stoves, and other appliances in Washington's unique aquatic environment. The commission shall evaluate the boating public's voluntary participation in the program and the program's impact on safe boating.

Sec. 3. RCW 43.51.400 and 1984 c 183 s 4 are each amended to read as follows:

The state parks and recreation commission shall:

(1) Coordinate a state-wide program of boating safety education using to the maximum extent possible existing programs offered by the United States power squadron and the United States coast guard auxiliary;

(2) Adopt rules in accordance with chapter 34.05 RCW, consistent with United States coast guard regulations, standards, and precedents, as needed for the efficient administration and enforcement of this section;

~~(3) ((Develop by January 31, 1984, a state-wide inventory of marine state parks and recreational facilities operated by other state and local agencies that are available for marine-related use by persons owning boats in this state;~~

~~(4))~~ Enter into agreements aiding the administration of this chapter;

~~((5))~~ (4) Adopt and administer a casualty and accident reporting program consistent with United States coast guard regulations;

~~((6))~~ (5) Adopt and enforce recreational boating safety rules, including but not necessarily limited to equipment and navigating requirements, consistent with United States coast guard regulations;

~~((7))~~ (6) Coordinate with local and state agencies the development of biennial plans and programs for the enhancement of boating safety, safety education, and enforcement of safety rules and laws; allocate money appropriated to the commission for these programs as necessary; and accept and administer any public or private grants or federal funds which are obtained for these purposes under chapter 43.88 RCW;

(7) Biennially report to the legislature the effects of the combined efforts of state and local boating safety programs on the state's boating accident and fatality rate. The report shall assess and recommend new or alternative fire safety and accident prevention laws adopted in other states as well as successful programs employed by government or industry; and

(8) Take additional actions necessary to gain acceptance of a program of boating safety for this state under the federal boating safety act of 1971.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

- (1) RCW 88.12.510 and 1993 c 469 s 2;
- (2) RCW 88.12.520 and 1993 c 469 s 3;
- (3) RCW 88.12.530 and 1993 c 469 s 4; and
- (4) RCW 88.12.540 and 1993 c 469 s 5.

Passed the Senate February 10, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 152

[Substitute Senate Bill 6593]

JUVENILE OFFENDERS—LEARNING AND LIFE SKILLS PROGRAM

AN ACT Relating to the learning and life skills program for court-involved youth; adding a new chapter to Title 13 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The learning and life skills grant program is created. The purpose of the program is to provide services, to the extent funds are appropriated, for court-involved youth under the age of twenty-one to help

the youth attain the necessary life skills and educational skills to obtain a certificate of educational competency, obtain employment, return to a school program, or enter a postsecondary education or job-training program.

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

(1) "Court-involved youth" means those youth under the age of twenty-one who, within the past twenty-four months:

- (a) Have served a court-imposed sentence;
- (b) Are or have been on probation or parole; or
- (c) Are involved in a legal proceeding in which the youth may be found to have committed a criminal or juvenile offense and are not participating in a diversion agreement under RCW 13.40.080.

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

NEW SECTION. Sec. 3. (1) The learning and life skills program grants shall be administered by the department.

(2) The department shall select individual school districts or groups of school districts through an educational service district that agree to establish a program for court-involved youth. To be eligible for grants, the district shall agree to expend for the program no less than the amount of state funds received on a full-time equivalent student basis for the number of full-time equivalent students participating in the program. The school district shall also transmit to the program any federal funds received for students participating in the program. During the 1994-95 school year, only school districts or educational service districts operating a program for court-involved youth on or before June 1, 1993, are eligible for grants.

(3) The department shall grant funds, to the extent funds are appropriated, to selected districts for the district to provide or contract for the provision of facilities and case management and counseling services for students in the program.

(4) In selecting districts, the department shall require districts to enter into agreements. Districts participating in the program shall agree to the following: To serve only court-involved youth in the program and give priority to those students who have few other educational options; to design a program to meet the specific needs of court-involved youth generally and the specific needs of individual students; to collaborate with the county courts and local community organizations; and to define program goals clearly.

(5) The department has the authority to withhold grant funds if the terms of the agreement are not met.

(6) Selected districts shall establish procedures to keep daily attendance records for students participating in the program.

(7) Selected districts shall agree to participate fully in an evaluation of the program by the department.

NEW SECTION. Sec. 4. The department may adopt rules, as necessary, to carry out its duties under this program.

NEW SECTION. Sec. 5. The department shall periodically evaluate the program including but not limited to providing data on the youth served, the type and extent of court involvement, the type of services provided, the length of stay of each student in the program, the academic progress of the youth, the recidivism rate, and rates of employment and enrollment in postsecondary education.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1994, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall constitute a new chapter in Title 13 RCW.

Passed the Senate February 11, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 153

[Senate Bill 6605]

**HEALTH INSURANCE—RETIRED AND DISABLED STATE
AND SCHOOL DISTRICT EMPLOYEES**

AN ACT Relating to health insurance for retired and disabled state and school district employees; amending RCW 41.05.022, 41.05.075, 41.05.080, 41.05.120, and 28A.400.400; reenacting and amending RCW 41.05.011, 41.05.050, 41.05.065, and 41.05.140; adding a new section to chapter 41.05 RCW; creating new sections; repealing RCW 41.05.250, 41.05.260, 41.05.270, and 28A.400.400; and providing effective dates.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees.

Sec. 2. RCW 41.05.011 and 1993 c 492 s 214 and 1993 c 386 s 5 are each reenacted and amended to read as follows:

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

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and

industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW. On and after July 1, 1995, "insuring entity" means a certified health plan, as defined in RCW 43.72.010.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) By October 1, 1995, all employees of school districts and educational service districts. Between October 1, 1994, and September 30, 1995, "employee" includes employees of those school districts and educational service districts for whom the authority has undertaken the purchase of insurance benefits. The transition to insurance benefits purchasing by the authority may not disrupt existing insurance contracts between school district or educational service district employees and insurers. However, except to the extent provided in RCW 28A.400.200, any such contract that provides for health insurance benefits coverage after October 1, 1995, shall be void as of that date if the contract was entered into, renewed, or extended after July 1, 1993. Prior to October 1, 1994, "employee" includes employees of a school district if the board of directors of the school district seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority; (b) employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (c) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32 or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district (~~(on or after October 1, 1993,)~~) due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32 or 41.40 RCW.

Sec. 3. RCW 41.05.022 and 1993 c 492 s 227 are each amended to read as follows:

(1) The health care authority is hereby designated as the single state agent for purchasing health services.

(2) On and after ~~((July))~~ January 1, 1995, at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: ~~((The basic health plan;))~~ Health benefits for employees of school districts and educational service districts; ((and)) health benefits for state employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare. Beginning July 1, 1995, the basic health plan shall be included in the risk pool. ~~((Until that date, in purchasing health services, the health care authority shall maintain separate risk pools for each of the programs in this subsection.))~~ The administrator may develop mechanisms to ensure that the cost of comparable benefits packages does not vary widely across the risk pools before they are merged. At the earliest opportunity the governor shall seek necessary federal waivers and state legislation to place the medical and acute care components of the medical assistance program, the limited casualty program, and the medical care services program of the department of social and health services in this single risk pool. Long-term care services that are provided under the medical assistance program shall not be placed in the single risk pool until such services have been added to the uniform benefits package. On or before January 1, 1997, the governor shall submit necessary legislation to place the purchasing of health benefits for persons incarcerated in institutions administered by the department of corrections into the single community-rated risk pool effective on and after July 1, 1997.

(3) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the basic health plan or a uniform benefits package as adopted by the Washington health services commission as provided in RCW 43.72.130, use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them consistent with the provisions of chapter 492, Laws of 1993, and that a health maintenance organization, health care service contractor, insurer, or certified health plan that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them under the provisions of chapter 492, Laws of 1993;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Annually suggest changes in state and federal law and rules to bring all publicly funded health programs in compliance with the goals and intent of chapter 492, Laws of 1993;

(e) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section.

Sec. 4. RCW 41.05.050 and 1993 c 492 s 216 and 1993 c 386 s 7 are each reenacted and amended to read as follows:

(1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, school district, educational service district, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups. Until October 1, 1995, contributions to be paid by school districts or educational service districts shall be adjusted by the authority to reflect ~~((that retired school employees are covered under RCW 41.05.250, and are not covered under RCW 41.05.080. All such contributions will be paid into the public employees' health insurance account))~~ the remittance provided under RCW 28A.400.400.

(2) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270 until December 31, 1996. On and after January 1, 1997, ferry employees shall enroll with certified health plans under chapter 492, Laws of 1993.

(3) The administrator with the assistance of the public employees' benefits board shall survey private industry and public employers in the state of Washington to determine the average employer contribution for group insurance programs under the jurisdiction of the authority. Such survey shall be conducted

during each even-numbered year but may be conducted more frequently. The survey shall be reported to the authority for its use in setting the amount of the recommended employer contribution to the employee insurance benefit program covered by this chapter. The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature.

Sec. 5. RCW 41.05.065 and 1993 c 492 s 218 and 1993 c 386 s 9 are each reenacted and amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state, however liability insurance shall not be made available to dependents.

(2) The public employees' benefits board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of standard benefit plans to be offered to enrollees participating in the employee health benefit plans. On and after July 1, 1995, the uniform benefits package shall constitute the minimum level of health benefits offered to employees. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria.

(4) The board shall attempt to achieve enrollment of all employees and retirees in managed health care systems by July 1994.

The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board.

(6) The board shall review plans proposed by insurance carriers that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by carriers holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

~~((7) The board shall develop benefit plans that provide health care benefits for retired or disabled school employees and their dependents, and shall establish terms and conditions of coverage under the plans. The board shall make available separate and appropriate plans that supplement medicare for retired or disabled school employees who are eligible for federal medicare coverage. The board shall also consider the elements referenced in subsection (2) of this section in developing the plans.))~~

Sec. 6. RCW 41.05.075 and 1993 c 386 s 10 are each amended to read as follows:

(1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities((?));

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process((?)); and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) The administrator shall establish methods for collecting, analyzing, and disseminating to covered individuals information on the cost and quality of services rendered by individual health care providers.

(6) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter.

(7) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.88 RCW. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a)((+)), (b), and (d).

(8) Beginning in January 1990, and each January thereafter until January 1996, the administrator shall publish and distribute to each school district a description of health care benefit plans available through the authority and the estimated cost if school district employees were enrolled.

Sec. 7. RCW 41.05.080 and 1993 c 386 s 11 are each amended to read as follows:

Retired or disabled state employees, retired or disabled school employees, or employees of county, municipal, or other political subdivisions covered by this chapter who are retired(~~(, but not including retired or disabled school employees.)~~) may continue their participation in insurance plans and contracts after retirement or disablement, under the qualifications, terms, conditions, and benefits set by the board: PROVIDED, That the rates charged ((such retired or disabled employees for health care will be developed from the same experience pool as active employees)) retired or disabled employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022: PROVIDED FURTHER, That rates charged to retired or disabled employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under section 8 of this act: PROVIDED FURTHER, That ((such)) retired or disabled employees shall ((bear the full cost of premiums required to provide such coverage)) be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter: PROVIDED FURTHER, That such self pay rates will be established based on a separate rate for the employee, the spouse, and the children(~~(+ PROVIDED FURTHER, That rates for a retired or disabled employee, spouse, or child who is eligible for and who elects to apply for medicare will be actuarially reduced to reflect the value of Part A and Part B of medicare))~~). The term "retired state employees" for the purpose of this

section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office.

NEW SECTION. Sec. 8. A new section is added to chapter 41.05 RCW to read as follows:

Beginning with the appropriations act for the 1995-1997 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The amount of any premium reduction shall be established by the board, but shall not result in a premium reduction of more than fifty percent. The board may also determine the amount of any subsidy to be available to spouses and dependents.

Sec. 9. RCW 41.05.120 and 1993 c 492 s 219 are each amended to read as follows:

(1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, the remittance paid by school districts and educational service districts under RCW 28A.400.400, reserves, dividends, and refunds, and for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under section 8 of this act. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' insurance account.

Sec. 10. RCW 41.05.140 and 1993 c 492 s 220 and 1993 c 386 s 12 are each reenacted and amended to read as follows:

(1) The authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction except property and casualty insurance. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided

in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the public employees' and retirees' insurance reserve fund.

~~(3) ((Reserves established by the authority for programs for retired or disabled school employees shall be held in a separate trust fund by the state treasurer and shall be known as the retired school employees' insurance reserve fund hereby created. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the retired school employees' insurance reserve fund.~~

(4)) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

~~((5))~~ (4) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

~~((6))~~ (5) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

~~((7))~~ (6) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

Sec. 11. RCW 28A.400.400 and 1993 c 386 s 13 are each amended to read as follows:

(1) In a manner prescribed by the state health care authority, school districts and educational service districts shall remit to the health care authority for deposit in the ~~((retired school employees' subsidy account established in RCW 41.05.260))~~ public employees' and retirees' insurance account established in RCW 41.05.120:

(a) During the period beginning October 1, 1993, and ending September 30, 1994:

(i) For each full-time employee of the district, ten dollars for each month of the school year;

(ii) For each part-time employee of the district who, at the time of the remittance, is employed in an eligible position as defined in RCW 41.32.010 or 41.40.010 and is eligible for employer fringe benefit contributions for basic benefits as defined in RCW 28A.400.270, ten dollars for each month of the school year, prorated by the proportion of employer fringe benefit contributions for a full-time employee that the part-time employee receives;

(b) Beginning October 1, 1994:

(i) For each full-time employee of the district, an amount equal to four and seven-tenths percent multiplied by the insurance benefit allocation rate in the appropriations act for a certificated or classified staff, for each month of the school year;

(ii) For each part-time employee of the district who, at the time of the remittance, is employed in an eligible position as defined in RCW 41.32.010 or 41.40.010 and is eligible for employer fringe benefit contributions for basic benefits as defined in RCW 28A.400.270, an amount equal to four and seven-tenths percent multiplied by the insurance benefit allocation rate in the appropriations act for a certificated or classified staff, for each month of the school year, prorated by the proportion of employer fringe benefit contributions for a full-time employee that the part-time employee receives.

(2) The legislature reserves the right to increase or decrease the percent or amount required to be remitted in this section.

NEW SECTION. Sec. 12. For the January 1, 1995, through December 31, 1995, plan year, amounts remitted by school districts and educational service districts under RCW 28A.400.400 may be used for the subsidy provided under section 8 of this act. Amounts remitted under RCW 28A.400.400 may also be used to reduce the increase in the premiums for active employees which may result from the single community rated risk pool under RCW 41.05.080. The reduction may be necessary before the enrollment of all active school district and educational service district employees under the health care authority plans as required under RCW 28A.400.350. This section shall expire January 1, 1996.

NEW SECTION. Sec. 13. (1) On January 1, 1995, the state treasurer shall transfer all moneys in the retired school employees' subsidy account to the public employees' and retirees' insurance account.

(2) On January 1, 1995, the state treasurer shall transfer all moneys in the retired school employees' insurance account to the public employees' and retirees' insurance account.

(3) On January 1, 1995, the state treasurer shall transfer all moneys in the retired school employees' insurance reserve fund to the public employees' and retirees' reserve fund.

NEW SECTION. Sec. 14. The following acts or parts of acts are each repealed:

- (1) RCW 41.05.250 and 1993 c 386 s 14;
- (2) RCW 41.05.260 and 1993 c 386 s 15; and
- (3) RCW 41.05.270 and 1993 c 386 s 16.

NEW SECTION. Sec. 15. RCW 28A.400.400 and 1993 c 386 s 13 are each repealed.

NEW SECTION. Sec. 16. This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995.

Passed the Senate March 1, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.

CHAPTER 154

[Engrossed Substitute Senate Bill 6111]

ETHICS IN PUBLIC SERVICE

AN ACT Relating to ethics in public service; amending RCW 42.18.270, 42.18.217, 42.18.230, 42.18.260, 27.26.070, 28B.50.060, 28C.18.040, 35.02.130, 35.21.418, 43.33A.110, 43.72.020, 51.36.110, 66.08.080, 67.16.160, 80.50.030, and 86.09.286; adding a new section to chapter 42.23 RCW; adding a new section to chapter 42.17 RCW; adding a new chapter to Title 42 RCW; creating new sections; recodifying RCW 42.18.217, 42.18.230, 42.18.260, 42.18.270, 42.18.330, and 42.22.050; repealing RCW 42.18.010, 42.18.020, 42.18.030, 42.18.040, 42.18.050, 42.18.060, 42.18.070, 42.18.080, 42.18.090, 42.18.100, 42.18.110, 42.18.120, 42.18.130, 42.18.140, 42.18.150, 42.18.170, 42.18.180, 42.18.190, 42.18.200, 42.18.210, 42.18.213, 42.18.215, 42.18.221, 42.18.240, 42.18.250, 42.18.280, 42.18.290, 42.18.300, 42.18.310, 42.18.320, 42.18.900, 42.20.010, 42.21.010, 42.21.020, 42.21.030, 42.21.040, 42.21.050, 42.21.080, 42.21.090, 42.22.010, 42.22.020, 42.22.030, 42.22.040, 42.22.060, 42.22.070, 42.22.120, 44.60.010, 44.60.020, 44.60.030, 44.60.040, 44.60.050, 44.60.070, 44.60.080, 44.60.090, 44.60.100, 44.60.110, 44.60.120, and 44.60.130; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should.

The obligations of government rest equally on the state's citizenry. The effectiveness of government depends, fundamentally, on the confidence citizens can have in the judgments and decisions of their elected representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.

All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens.

PART I
GENERAL ETHICS PROVISIONS

NEW SECTION. Sec. 101. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(8) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(9) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW; and

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group.

(10) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(11) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(12) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(13) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(14) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(15) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(16) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of

the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(17) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(18) "Thing of economic value", in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(19) (a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

NEW SECTION. Sec. 102. ACTIVITIES INCOMPATIBLE WITH PUBLIC DUTIES. No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's duties.

NEW SECTION. Sec. 103. FINANCIAL INTERESTS IN TRANSACTIONS. (1) No state officer or state employee may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or

reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest.

NEW SECTION. Sec. 104. ASSISTING IN TRANSACTIONS. (1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated;
or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

(4) This chapter does not prevent a state officer or state employee from assisting, in a transaction involving the state:

(a) The state officer's or state employee's parent, spouse, or child, or a child thereof for whom the officer or employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the state officer or state employee did not participate in the transaction; or

(b) Another state employee involved in disciplinary or other personnel administration proceedings.

NEW SECTION. Sec. 105. CONFIDENTIAL INFORMATION. No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to disclose confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may disclose confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under

chapter 42.17 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

NEW SECTION. Sec. 106. TESTIMONY OF STATE OFFICERS AND STATE EMPLOYEES. This chapter does not prevent a state officer or state employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt.

NEW SECTION. Sec. 107. SPECIAL PRIVILEGES. Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

NEW SECTION. Sec. 108. POSTPUBLIC SERVICE EMPLOYMENT. (1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or 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 employer 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 with the employer or the activities for which the compensation would be received 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 prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances

would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or 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 officer or 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 officers or state employees in the course of employee organization business.

(6) As used in this section, "employer" means a person as defined in section 101 of this act or any other entity or business that the person owns or in which the person has a controlling interest.

NEW SECTION. Sec. 109. FORMER STATE OFFICERS AND STATE EMPLOYEES. This chapter shall not be construed to prevent a former state officer or 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:

(1) Providing the names, addresses, and telephone numbers of state agencies or state employees;

(2) Providing free transportation to another for the purpose of conducting business with a state agency;

(3) 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

(4) Providing assistance to the poor and infirm.

Sec. 110. RCW 42.18.270 and 1969 ex.s. c 234 s 27 are each amended to read as follows:

(1) The head of an agency, upon finding that any former state officer or state employee of such agency or any other person has violated any provision of this chapter or rules adopted under it, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon:

(a) The appearance before such agency of such former state officer or state employee or other person; and

(b) The conduct of, or negotiation or competition for, business with such agency by such former state officer or state employee or other person, such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this chapter.

(2) Findings of violations referred to in subsection (1)(b) of this section shall be made on record after notice and hearing, conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW. Such findings and orders are subject to judicial review.

(3) This section does not apply to the legislative or judicial branches of government.

NEW SECTION. Sec. 111. COMPENSATION FOR OFFICIAL DUTIES. No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the state of Washington for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law.

NEW SECTION. Sec. 112. COMPENSATION FOR OUTSIDE ACTIVITIES. (1) No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where each of the following conditions are met:

- (a) The contract or grant is bona fide and actually performed;
- (b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;
- (c) The performance of the contract or grant is not prohibited by section 104 of this act or by applicable laws or rules governing outside employment for the officer or employee;
- (d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by section 115(4) of this act from receiving a gift;
- (e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity or by his or her agency;
- (f) The contract or grant would not require unauthorized disclosure of confidential information.

(2) In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract with a state agency only if:

- (a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or
- (b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the officer's or employee's bid or proposal was the only bid or proposal received and the officer or employee has been advised by the appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties; or
- (c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties.

(3) A state officer or state employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the appropriate ethics board within thirty days after the date of execution.

(4) This section does not prevent a state officer or state employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the officer's or employee's agency. This section does not prohibit a state officer or state employee from serving or performing any duties under an employment contract with a governmental entity.

(5) As used in this section, "officer" and "employee" do not include officers and employees who, in accordance with the terms of their employment or appointment, are serving without compensation from the state of Washington or are receiving from the state only reimbursement of expenses incurred or a predetermined allowance for such expenses.

NEW SECTION. Sec. 113. HONORARIA. (1) No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

(2) An agency may not permit honoraria under the following circumstances:

(a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the employer of the state officer or state employee, and the officer or employee is in a position to participate in the terms or the award of the contract or grant;

(b) The person offering the honorarium is regulated by the employer of the state officer or state employee and the officer or employee is in a position to participate in the regulation; or

(c) The person offering the honorarium (i) is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) the officer or employee may participate in the enactment or adoption.

NEW SECTION. Sec. 114. GIFTS. No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

NEW SECTION. Sec. 115. LIMITATIONS ON GIFTS. (1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in section 101 of this act, whether

acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under section 101 of this act. The value of gifts given to an officer's or employee's family member shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under section 114 of this act, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(h) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal

beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in section 101 of this act except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

Sec. 116. RCW 42.18.217 and 1987 c 426 s 3 are each amended to read as follows:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's public duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

Sec. 117. RCW 42.18.230 and 1987 c 426 s 5 are each amended to read as follows:

((4)) No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of ((RCW 42.18.170, 42.18.190, and 42.18.213)) section 104, 111, 112, 114, or 115 of this act.

~~((2) No person shall give, transfer, or deliver, directly or indirectly, to a state employee, any thing of economic value as a gift, gratuity, or favor if either:~~

~~(a) Such person would not give the gift, gratuity, or favor but for such employee's office or position with the state; or~~

~~(b) Such person is in a status specified in clause (a), (b), or (c) of RCW 42.18.200(2).~~

~~Exceptions to this subsection (2) may be made by regulations issued pursuant to RCW 42.18.240 in situations referred to in RCW 42.18.200(3).)~~

NEW SECTION. Sec. 118. USE OF PUBLIC RESOURCES FOR POLITICAL CAMPAIGNS. (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The public disclosure commission shall, after consultation with the ethics boards, adopt by rule a definition of measurable expenditure;

(c) Activities that are part of the normal and regular conduct of the office or agency; and

(d) De minimis use of public facilities by state-wide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17.130.

NEW SECTION. Sec. 119. INVESTMENTS. (1) Except for permissible investments as defined in this section, no state officer or state employee of any agency responsible for the investment of funds, who acts in a decision-making, advisory, or policy-influencing capacity with respect to investments, may have a direct or indirect interest in any property, security, equity, or debt instrument of a person, without prior written approval of the agency.

(2) Agencies responsible for the investment of funds shall adopt policies governing approval of investments and establishing criteria to be considered in the approval process. Criteria shall include the relationship between the proposed investment and investments held or under consideration by the state, the size and timing of the proposed investment, access by the state officer or state employee to nonpublic information relative to the proposed investment, and the availability of the investment in the public market. Agencies responsible for the investment of funds also shall adopt policies consistent with this chapter governing use by their officers and employees of financial information acquired by virtue of their state positions. A violation of such policies adopted to implement this subsection shall constitute a violation of this chapter.

(3) As used in this section, "permissible investments" means any mutual fund, deposit account, certificate of deposit, or money market fund maintained with a bank, broker, or other financial institution, a security publicly traded in an organized market if the interest in the security at acquisition is ten thousand dollars or less, or an interest in real estate, except if the real estate interest is in or with a party in whom the agency holds an investment.

NEW SECTION. Sec. 120. AGENCY RULES. (1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules.

NEW SECTION. Sec. 121. A new section is added to chapter 42.23 RCW to read as follows:

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

PART II
ETHICS ENFORCEMENT BOARDS

NEW SECTION. Sec. 201. LEGISLATIVE ETHICS BOARD. (1) The legislative ethics board is created, composed of nine members, selected as follows:

(a) Two senators, one from each of the two largest caucuses, appointed by the president of the senate;

(b) Two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(c) Five citizen members:

(i) One citizen member chosen by the governor from a list of three individuals submitted by each of the four legislative caucuses; and

(ii) One citizen member selected by three of the four other citizen members of the legislative ethics board.

(2) Except for initial members and members completing partial terms, nonlegislative members shall serve a single five-year term.

(3) No more than three of the public members may be identified with the same political party.

(4) Terms of initial nonlegislative board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed for a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Legislative members shall serve two-year terms, from January 31st of an odd-numbered year until January 31st of the next odd-numbered year.

(7) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(8) The citizen members shall annually select a chair from among themselves.

NEW SECTION. Sec. 202. AUTHORITY OF LEGISLATIVE ETHICS BOARD. (1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

(2) The legislative ethics board shall:

(a) Develop educational materials and training with regard to legislative ethics for legislators and legislative employees;

(b) Issue advisory opinions;

(c) Adopt rules or policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of section 118 of this act and where otherwise authorized under chapter . . . , Laws of 1994 (this act);

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend suspension or removal to the appropriate legislative entity, or recommend prosecution to the appropriate authority; and

(g) Establish criteria regarding the levels of civil penalties appropriate for different types of violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) Subject to section 224 of this act, the board has jurisdiction over any alleged violation that occurred before January 1, 1995, and that was within the jurisdiction of any of the boards established under chapter 44.60 RCW. The board's jurisdiction with respect to any such alleged violation shall be based on the statutes and rules in effect at time of the violation.

NEW SECTION. Sec. 203. By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this act shall be interpreted in light of this constitutional principle.

NEW SECTION. Sec. 204. TRANSFER OF JURISDICTION. On the effective date of this section, any complaints or other matters under investigation or consideration by the boards of legislative ethics in the house of representatives and the senate operating pursuant to chapter 44.60 RCW shall be transferred to the legislative ethics board created by this act. All files, including but not limited to minutes of meetings, investigative files, records of proceedings, exhibits, and expense records, shall be transferred to the legislative ethics board created in this act pursuant to their direction and the legislative ethics board created in this act shall assume full jurisdiction over all pending complaints, investigations, and proceedings.

NEW SECTION. Sec. 205. EXECUTIVE ETHICS BOARD. (1) The executive ethics board is created, composed of five members, appointed by the governor as follows:

(a) One member shall be a classified service employee as defined in chapter 41.06 RCW;

(b) One member shall be a state officer or state employee in an exempt position;

(c) One member shall be a citizen selected from a list of three names submitted by the attorney general;

(d) One member shall be a citizen selected from a list of three names submitted by the state auditor; and

(e) One member shall be a citizen selected at large by the governor.

(2) Except for initial members and members completing partial terms, members shall serve a single five-year term.

(3) No more than three members may be identified with the same political party.

(4) Terms of initial board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed to a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(7) The members shall annually select a chair from among themselves.

(8) Staff shall be provided by the office of the attorney general.

NEW SECTION. Sec. 206. AUTHORITY OF EXECUTIVE ETHICS BOARD. (1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to state-wide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of section 118 of this act and where otherwise authorized under chapter . . . , Laws of 1994 (this act);

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) The executive ethics board may review and approve agency policies as provided for in this chapter.

(5) This section does not apply to state officers and state employees of the judicial branch.

NEW SECTION. Sec. 207. AUTHORITY OF COMMISSION ON JUDICIAL CONDUCT. The commission on judicial conduct shall enforce this chapter and rules adopted under it with respect to state officers and employees of the judicial branch and may do so according to procedures prescribed in Article IV, section 31 of the state Constitution. In addition to the sanctions authorized in Article IV, section 31 of the state Constitution, the commission may impose sanctions authorized by this chapter.

NEW SECTION. Sec. 208. POLITICAL ACTIVITIES OF CITIZEN BOARD MEMBERS. No member of the executive ethics board and none of the five citizen members of the legislative ethics board may (1) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (2) be an officer of any political party or political committee as defined in chapter 42.17 RCW other than the position of precinct committeeperson; (3) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (4) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

NEW SECTION. Sec. 209. HEARING AND SUBPOENA AUTHORITY. Except as otherwise provided by law, the ethics boards may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board. The ethics board may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations, and other process or papers of the ethics board.

NEW SECTION. Sec. 210. ENFORCEMENT OF SUBPOENA AUTHORITY. In case of refusal to obey a subpoena issued to a person, the superior court of a county within the jurisdiction of which the investigation, proceeding, or hearing under this chapter is carried on or within the jurisdiction of which the person refusing to obey is found or resides or transacts business, upon application by the appropriate ethics board shall have jurisdiction to issue to the person an order requiring the person to appear before the ethics board or its member to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as contempt.

NEW SECTION. Sec. 211. FILING COMPLAINT. (1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

NEW SECTION. Sec. 212. INVESTIGATION. After the filing of any complaint, except as provided in section 215 of this act, the staff of the appropriate ethics board shall investigate the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to writing and a determination shall be made that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed. A copy of the written determination shall be provided to the complainant and to the person named in such complaint.

NEW SECTION. Sec. 213. PUBLIC HEARING—FINDINGS. (1) If the ethics board determines there is reasonable cause under section 212 of this act that a violation of this chapter or rules adopted under it occurred, a public hearing on the merits of the complaint shall be held.

(2) The ethics board shall designate the location of the hearing. The case in support of the complaint shall be presented at the hearing by staff of the ethics board.

(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 witnesses.

(4) Testimony taken at the hearing shall be under oath and recorded.

(5) If, based upon a preponderance of the evidence, the ethics board finds that the respondent has violated this chapter or rules adopted under it, the board shall file an order stating findings of fact and enforcement action as authorized under this chapter.

(6) If, upon all the evidence, the ethics board finds that the respondent has not engaged in an alleged violation of this chapter or rules adopted under it, the ethics board shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(7) If the board makes a determination that there is not reasonable cause to believe that a violation has been or is being committed or has made a finding under subsection (6) of this section, the attorney general shall represent the officer or employee in any action subsequently commenced based on the alleged facts in the complaint.

NEW SECTION. Sec. 214. REVIEW OF ORDER. Except as otherwise provided by law, reconsideration or judicial review of an ethics board's order that a violation of this chapter or rules adopted under it has occurred shall be governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings.

NEW SECTION. Sec. 215. COMPLAINT AGAINST LEGISLATOR OR STATE-WIDE ELECTED OFFICIAL. (1) If a complaint alleges a violation of section 118 of this act by a legislator or state-wide elected official other than the attorney general, the attorney general shall conduct the investigation under section 212 of this act and recommend action to the appropriate ethics board.

(2) If a complaint alleges a violation of section 118 of this act by the attorney general, the state auditor shall conduct the investigation under section 212 of this act and recommend action to the appropriate ethics board.

NEW SECTION. Sec. 216. CITIZEN ACTIONS. Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that section 118 of this act is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to commence an action, and the appropriate ethics board and the attorney general have in fact failed to bring an action within ten days of receipt of the second notice.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment.

NEW SECTION. Sec. 217. REFERRAL FOR ENFORCEMENT. As appropriate, an ethics board may refer a complaint:

(1) To an agency for initial investigation and proposed resolution which shall be referred back to the appropriate ethics board for action; or

(2) To the attorney general's office or prosecutor for appropriate action.

NEW SECTION. Sec. 218. ACTION BY BOARDS. (1) Except as otherwise provided by law, an ethics board may order payment of the following

amounts if it finds a violation of this chapter or rules adopted under it after a hearing under section 207 of this act or other applicable law:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) Damages under this section may be enforced in the same manner as a judgment in a civil case.

NEW SECTION. Sec. 219. ACTION BY ATTORNEY GENERAL. (1) Upon a written determination by the attorney general that the action of an ethics board was clearly erroneous or if requested by an ethics board, the attorney general may bring a civil action in the superior court of the county in which the violation is alleged to have occurred against a state officer, state employee, former state officer, former state employee, or other person who has violated or knowingly assisted another person in violating any of the provisions of this chapter or the rules adopted under it. In such action the attorney general may recover the following amounts on behalf of the state of Washington:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or the rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under subsection (1)(b) of this section. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) In any civil action brought by the attorney general upon the basis that the attorney general has determined that the board's action was clearly erroneous, the court shall not proceed with the action unless the attorney general has first shown, and the court has found, that the action of the board was clearly erroneous.

NEW SECTION. Sec. 220. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGE. If an ethics board finds that there is reasonable cause to believe that a violation has occurred, the board shall consider the possibility of the alleged violator having to pay a total amount of penalty and costs of more than five hundred dollars. Based on such consideration, the board may give the person who is the subject of the complaint the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters.

The board may also, on its own initiative, provide for retaining an administrative law judge. An ethics board may not require total payment of more than five hundred dollars in penalty and costs in any case where an administrative law judge is not used and the board did not give such option to the person who is the subject of the complaint.

NEW SECTION. Sec. 221. RESCISSION OF STATE ACTION. (1) The attorney general may, on request of the governor or the appropriate agency, and in addition to other available rights of rescission, bring an action in the superior court of Thurston county to cancel or rescind state action taken by a state officer or state employee, without liability to the state of Washington, contractual or otherwise, if the governor or ethics board has reason to believe that: (a) A violation of this chapter or rules adopted under it has substantially influenced the state action, and (b) the interest of the state requires the cancellation or rescission. The governor may suspend state action pending the determination of the merits of the controversy under this section. The court may permit persons affected by the governor's actions to post an adequate bond pending such resolution to ensure compliance by the defendant with the final judgment, decree, or other order of the court.

(2) This section does not limit other available remedies.

Sec. 222. RCW 42.18.260 and 1969 ex.s. c 234 s 26 are each amended to read as follows:

(1) ~~((The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect to any state employee of his agency upon finding that such employee has violated this chapter or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in RCW 42.18.270(1)))~~ A violation of this chapter or rules adopted under it is grounds for disciplinary action.

(2) The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally; for those state officers and state employees not specifically exempted ~~((therein))~~ in chapter 41.06 RCW, the rules set forth in ~~((the state civil service law,))~~ chapter 41.06 RCW((:)) shall apply. Any action against the state officer or state employee shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of state officers and state employees of the same category and grade.

NEW SECTION. Sec. 223. ADDITIONAL INVESTIGATIVE AUTHORITY. In addition to other authority under this chapter, the attorney general may investigate persons not under the jurisdiction of an ethics board whom the attorney general has reason to believe were involved in transactions in violation of this chapter or rules adopted under it.

NEW SECTION. Sec. 224. LIMITATIONS PERIOD. Any action taken under this chapter must be commenced within five years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person charged, then the action must be commenced

within two years from the date the violation was discovered or reasonably should have been discovered: (1) By any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation; or (2) if no person has direct or indirect supervisory authority over the person who committed the violation, by the appropriate ethics board.

NEW SECTION. **Sec. 225.** The members of the legislative ethics board created by section 201 of this act and the executive ethics board created by section 204 of this act shall be appointed no later than October 1, 1994. Notwithstanding the authority granted to these boards by sections 202 and 205 of this act, until January 1, 1995, the authority of each board shall be limited to conducting meetings and incurring expenses solely for administrative and organizational purposes.

This section shall expire January 1, 1995.

NEW SECTION. **Sec. 226.** Any violations occurring prior to January 1, 1995, of any of the following laws shall be disposed of as if chapter . . . , Laws of 1994 (this act) were not enacted and such laws continued in full force and effect: RCW 42.17.130, chapter 42.18 RCW, chapter 42.21 RCW, and chapter 42.22 RCW.

NEW SECTION. **Sec. 227.** The citizen members of the legislative ethics board and the members of the executive ethics board shall be compensated as provided in RCW 43.03.250 and reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislator members of the legislative ethics board shall be reimbursed as provided in RCW 44.04.120.

PART III MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 301. LIBERAL CONSTRUCTION.** This chapter shall be construed liberally to effectuate its purposes and policy and to supplement existing laws as may relate to the same subject.

NEW SECTION. **Sec. 302. PARTS AND CAPTIONS NOT LAW.** Parts and captions used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 303.** The following sections are each recodified as sections in chapter 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act):

RCW 42.18.217

RCW 42.18.230

RCW 42.18.260

RCW 42.18.270

RCW 42.18.330

RCW 42.22.050

NEW SECTION. Sec. 304. The following acts or parts of acts are each repealed:

- (1) RCW 42.18.010 and 1969 ex.s. c 234 s 1;
- (2) RCW 42.18.020 and 1969 ex.s. c 234 s 2;
- (3) RCW 42.18.030 and 1969 ex.s. c 234 s 3;
- (4) RCW 42.18.040 and 1969 ex.s. c 234 s 4;
- (5) RCW 42.18.050 and 1969 ex.s. c 234 s 5;
- (6) RCW 42.18.060 and 1969 ex.s. c 234 s 6;
- (7) RCW 42.18.070 and 1969 ex.s. c 234 s 7;
- (8) RCW 42.18.080 and 1969 ex.s. c 234 s 8;
- (9) RCW 42.18.090 and 1969 ex.s. c 234 s 9;
- (10) RCW 42.18.100 and 1969 ex.s. c 234 s 10;
- (11) RCW 42.18.110 and 1969 ex.s. c 234 s 11;
- (12) RCW 42.18.120 and 1969 ex.s. c 234 s 12;
- (13) RCW 42.18.130 and 1973 c 137 s 1 & 1969 ex.s. c 234 s 13;
- (14) RCW 42.18.140 and 1969 ex.s. c 234 s 14;
- (15) RCW 42.18.150 and 1969 ex.s. c 234 s 15;
- (16) RCW 42.18.170 and 1969 ex.s. c 234 s 17;
- (17) RCW 42.18.180 and 1969 ex.s. c 234 s 18;
- (18) RCW 42.18.190 and 1969 ex.s. c 234 s 19;
- (19) RCW 42.18.200 and 1969 ex.s. c 234 s 20;
- (20) RCW 42.18.210 and 1969 ex.s. c 234 s 21;
- (21) RCW 42.18.213 and 1987 c 426 s 1;
- (22) RCW 42.18.215 and 1987 c 426 s 2;
- (23) RCW 42.18.221 and 1989 c 96 s 6 & 1987 c 426 s 4;
- (24) RCW 42.18.240 and 1969 ex.s. c 234 s 24;
- (25) RCW 42.18.250 and 1969 ex.s. c 234 s 25;
- (26) RCW 42.18.280 and 1969 ex.s. c 234 s 28;
- (27) RCW 42.18.290 and 1973 c 137 s 2 & 1969 ex.s. c 234 s 29;
- (28) RCW 42.18.300 and 1973 c 137 s 3 & 1969 ex.s. c 234 s 30;
- (29) RCW 42.18.310 and 1969 ex.s. c 234 s 31;
- (30) RCW 42.18.320 and 1969 ex.s. c 234 s 32;
- (31) RCW 42.18.900 and 1969 ex.s. c 234 s 40;
- (32) RCW 42.20.010 and 1969 ex.s. c 234 s 34 & 1909 c 249 s 82;
- (33) RCW 42.21.010 and 1965 ex.s. c 150 s 1;
- (34) RCW 42.21.020 and 1989 c 175 s 93, 1971 c 81 s 106, & 1965 ex.s. c 150 s 2;
- (35) RCW 42.21.030 and 1965 ex.s. c 150 s 3;
- (36) RCW 42.21.040 and 1965 ex.s. c 150 s 4;
- (37) RCW 42.21.050 and 1965 ex.s. c 150 s 5;
- (38) RCW 42.21.080 and 1965 ex.s. c 150 s 8;
- (39) RCW 42.21.090 and 1969 ex.s. c 234 s 36;
- (40) RCW 42.22.010 and 1959 c 320 s 1;
- (41) RCW 42.22.020 and 1959 c 320 s 2;

- (42) RCW 42.22.030 and 1961 c 268 s 3 & 1959 c 320 s 3;
- (43) RCW 42.22.040 and 1989 c 11 s 13 & 1959 c 320 s 4;
- (44) RCW 42.22.060 and 1959 c 320 s 6;
- (45) RCW 42.22.070 and 1959 c 320 s 7;
- (46) RCW 42.22.120 and 1969 ex.s. c 234 s 37;
- (47) RCW 44.60.010 and 1977 ex.s. c 218 s 1 & 1967 ex.s. c 150 s 1;
- (48) RCW 44.60.020 and 1980 c 87 s 43, 1977 ex.s. c 218 s 2, & 1967 ex.s. c 150 s 2;
- (49) RCW 44.60.030 and 1967 ex.s. c 150 s 3;
- (50) RCW 44.60.040 and 1977 ex.s. c 218 s 3 & 1967 ex.s. c 150 s 4;
- (51) RCW 44.60.050 and 1984 c 287 s 92, 1979 c 151 s 159, 1977 ex.s. c 218 s 4, 1975-'76 2nd ex.s. c 34 s 135, & 1967 ex.s. c 150 s 5;
- (52) RCW 44.60.070 and 1980 c 165 s 1, 1977 ex.s. c 218 s 5, & 1967 ex.s. c 150 s 6;
- (53) RCW 44.60.080 and 1977 ex.s. c 218 s 6 & 1967 ex.s. c 150 s 8;
- (54) RCW 44.60.090 and 1967 ex.s. c 150 s 9;
- (55) RCW 44.60.100 and 1977 ex.s. c 218 s 7;
- (56) RCW 44.60.110 and 1980 c 165 s 2 & 1977 ex.s. c 218 s 8;
- (57) RCW 44.60.120 and 1977 ex.s. c 218 s 9; and
- (58) RCW 44.60.130 and 1977 ex.s. c 218 s 10.

Sec. 305. RCW 27.26.070 and 1989 c 96 s 3 are each amended to read as follows:

(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 RCW 27.26.070 through 27.26.090 and section 11, chapter 96, Laws of 1989 and (~~RCW 42.18.221~~) chapter 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act) 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 June 1, 1989. 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 June 1, 1989.

Sec. 306. RCW 28B.50.060 and 1991 c 238 s 31 are each amended to read as follows:

A director of the state system of community and technical colleges shall be appointed by the college board and shall serve at the pleasure of the college board. The director shall be appointed with due regard to the applicant's fitness and background in education, and knowledge of and recent practical experience in the field of educational administration particularly in institutions beyond the high school level. The college board may also take into consideration an applicant's proven management background even though not particularly in the field of education.

The director shall devote his or her time to the duties of his or her office and shall not have any direct pecuniary interest in or any stock or bonds of any business connected with or selling supplies to the field of education within this state, in keeping with chapter ~~((42.18 RCW, the executive conflict of interest act))~~ 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act).

The director shall receive a salary to be fixed by the college board and shall be reimbursed for travel expenses incurred in the discharge of his or her official duties in accordance with RCW 43.03.050 and 43.03.060 ~~((as now existing or hereafter amended))~~.

The director shall be the executive officer of the college board and serve as its secretary and under its supervision shall administer the provisions of this chapter and the rules ~~((regulations))~~ and orders established thereunder and all other laws of the state. The director shall attend, but not vote at, all meetings of the college board. The director shall be in charge of offices of the college board and responsible to the college board for the preparation of reports and the collection and dissemination of data and other public information relating to the state system of community and technical colleges. At the direction of the college board, the director shall, together with the chairman of the college board, execute all contracts entered into by the college board.

The director shall, with the approval of the college board: (1) Employ necessary assistant directors of major staff divisions who shall serve at the director's pleasure on such terms and conditions as the director determines, and (2) subject to the provisions of chapter ~~((28B.16))~~ 41.06 RCW ~~((the higher education personnel law))~~ the director shall, with the approval of the college board, appoint and employ such field and office assistants, clerks and other employees as may be required and authorized for the proper discharge of the functions of the college board and for whose services funds have been appropriated.

The board may, by written order filed in its office, delegate to the director any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised by the director in the name of the college board.

Sec. 307. RCW 28C.18.040 and 1991 c 238 s 5 are each amended to read as follows:

(1) The director shall serve as chief executive officer of the board who shall administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, and utilize staff of existing operating agencies to the fullest extent possible.

(2) The director shall not be the chair of the board:

(3) Subject to the approval of the board, the director shall appoint necessary deputy and assistant directors and other staff who shall be exempt from the provisions of chapter 41.06 RCW. The director's appointees shall serve at the director's pleasure on such terms and conditions as the director determines but subject to ~~((the code of ethics contained in chapter 42.18 RCW))~~ chapter 42.—RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act).

(4) The director shall appoint and employ such other employees as may be required for the proper discharge of the functions of the board.

(5) The director shall, as permissible under P.L. 101-392, as amended, integrate the staff of the council on vocational education, and contract with the state board for community and technical colleges for assistance for adult basic skills and literacy policy development and planning as required by P.L. 100-297, as amended.

Sec. 308. RCW 35.02.130 and 1991 c 360 s 3 are each amended to read as follows:

The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17 RCW relating to open government; chapter 40.14 RCW relating to the preservation and

disposition of public records; chapters 42.20(~~(,42.22,)~~) and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.310, 35.24.220, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal

election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW 29.04.170. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW 29.13.020.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation.

Sec. 309. RCW 35.21.418 and 1984 c 1 s 2 are each amended to read as follows:

A commission, established by an agreement between a Washington municipality and the Province of British Columbia to carry out a treaty between the United States of America and Canada as authorized in RCW 35.21.417, shall be public and shall have all powers and capacity necessary and appropriate for the purposes of performing its functions under the agreement, including, but not limited to, the following powers and capacity: To acquire and dispose of real property other than by condemnation; to enter into contracts; to sue and be sued in either Canada or the United States; to establish an endowment fund in either or both the United States and Canada and to invest the endowment fund in either or both countries; to solicit, accept, and use donations, grants, bequests, or devises intended for furthering the functions of the endowment; to adopt such rules or procedures as it deems desirable for performing its functions; to engage advisors and consultants; to establish committees and subcommittees; to adopt rules for its governance; to enter into agreements with public and private entities; and to engage in activities necessary and appropriate for implementing the agreement and the treaty.

The endowment fund and commission may not be subject to state or local taxation. A commission, so established, may not be subject to statutes and laws governing Washington cities and municipalities in the conduct of its internal affairs: PROVIDED, That all commission members appointed by the municipality shall comply with chapter (~~42.22-RCW~~) 42.— RCW (sections 101 through

109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act), and: PROVIDED FURTHER, That all commission meetings held within the state of Washington shall be held in compliance with chapter 42.30 RCW. All obligations or liabilities incurred by the commission shall be satisfied exclusively from its own assets and insurance.

Sec. 310. RCW 43.33A.110 and 1989 c 179 s 1 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, 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))~~ 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act). Rules adopted by the board shall be adopted pursuant to chapter 34.05 RCW.

Sec. 311. RCW 43.72.020 and 1993 c 492 s 403 are each amended to read as follows:

(1) There is created an agency of state government to be known as the Washington health services commission. The commission shall consist of five members reflecting ethnic and racial diversity, appointed by the governor, with the consent of the senate. One member shall be designated by the governor as chair and shall serve at the pleasure of the governor. The insurance commissioner shall serve as an additional nonvoting member. Of the initial members, one shall be appointed to a term of three years, two shall be appointed to a term of four years, and two shall be appointed to a term of five years. Thereafter, members shall be appointed to five-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

(2) Members of the commission shall have no pecuniary interest in any business subject to regulation by the commission and shall be subject to chapter ~~((42.18 RCW, the executive branch conflict of interest act))~~ 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act).

(3) Members of the commission shall occupy their positions on a full-time basis and are exempt from the provisions of chapter 41.06 RCW. Commission members and the professional commission staff are subject to the public disclosure provisions of chapter 42.17 RCW. Members shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. A majority of the members of the commission constitutes a quorum for the conduct of business.

Sec. 312. RCW 51.36.110 and 1993 c 515 s 6 are each amended to read as follows:

The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: **PROVIDED**, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of (~~RCW 42.22.040~~) section 105 of this act, unless such disclosure is directly connected to the official duties of the department: **AND PROVIDED FURTHER**, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: **AND PROVIDED FURTHER**, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW.

Sec. 313. RCW 66.08.080 and 1981 1st ex.s. c 5 s 3 are each amended to read as follows:

Except as provided by chapter (~~42.18 RCW~~) 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act), no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business.

Sec. 314. RCW 67.16.160 and 1973 1st ex.s. c 216 s 5 are each amended to read as follows:

No later than ninety days after July 16, 1973 the horse racing commission shall promulgate, pursuant to chapter 34.05 RCW, reasonable rules (~~and regulations~~) implementing to the extent applicable to the circumstances of the

horse racing commission the conflict of interest laws of the state of Washington as set forth in chapters ~~((42.18,))~~ 42.21 and ~~((42.22 RCW))~~ 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act).

Sec. 315. RCW 80.50.030 and 1990 c 12 s 3 are each amended to read as follows:

(1) There is created and established the energy facility site evaluation council.

(2)(a) The chairman of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The chairman is a "state employee" for the purposes of chapter ~~((42.18 RCW))~~ 42.— RCW (sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act). As applicable, when attending meetings of the council~~((f,))~~, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.240.

(b) The chairman or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state energy office shall provide all administrative and staff support for the council. The director of the energy office has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (a) Department of ecology;
- (b) Department of ~~((fisheries;~~
- ~~((e) Department of))~~ fish and wildlife;
- ~~((d))~~ (c) Parks and recreation commission;
- ~~((e))~~ (d) Department of health;
- ~~((f))~~ (e) State energy office;
- ~~((g))~~ (f) Department of community, trade, and economic development;
- ~~((h))~~ (g) Utilities and transportation commission;
- ~~((i))~~ (h) Office of financial management;
- ~~((j))~~ (i) Department of natural resources;
- ~~((k) Department of community development;~~
- ~~((l))~~ (j) Department of agriculture;
- ~~((m))~~ (k) Department of transportation.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a

voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site;

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

Sec. 316. RCW 86.09.286 and 1969 ex.s. c 234 s 35 are each amended to read as follows:

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: **PROVIDED**, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as foreman or as a day laborer: **PROVIDED FURTHER**, That this section shall have no application to any person who is a state employee as defined in (~~RCW 42.18.130~~) section 101 of this act.

NEW SECTION. **Sec. 317.** A new section is added to chapter 42.17 RCW to read as follows:

RCW 42.17.130 does not apply to any person who is a state officer or state employee as defined in section 101 of this act.

NEW SECTION. **Sec. 318.** Sections 101 through 109, 111 through 115, 118 through 120, 201, 202, 203, 205 through 221, 223, 224, 227, 301, and 302 of this act shall constitute a new chapter in Title 42 RCW.

NEW SECTION. **Sec. 319.** Sections 101 through 121, 203, 204, 207 through 224, and 301 through 317 of this act shall take effect January 1, 1995.

NEW SECTION. Sec. 320. 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 9, 1994.

Passed the House March 8, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 155

[Second Substitute House Bill 1009]

LIS PENDENS NOTICES

AN ACT Relating to notices of lis pendens; and adding a new section to chapter 4.28 RCW. Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.28 RCW to read as follows:

(1) For purposes of this section:

(a) "Lis pendens" means a lis pendens filed under RCW 4.28.320 or 4.28.325 or other instrument having the effect of clouding the title to real property, however named, including consensual commercial lien, common law lien, commercial contractual lien, or demand for performance of public office lien, but does not include a lis pendens filed in connection with an action under Title 6, 60, other than chapter 60.70 RCW, or 61 RCW.

(b) "Claimant" means a person who files a lis pendens, but does not include the United States, any agency thereof, or the state of Washington, any agency, political subdivision, or municipal corporation thereof; and

(c) "Aggrieved party" means (i) a person against whom the claimant asserted the cause of action in which the lis pendens was filed, but does not include parties fictitiously named in the pleading; or (ii) a person having an interest or a right to acquire an interest in the real property against which the lis pendens was filed, provided that the claimant had actual or constructive knowledge of such interest or right when the lis pendens was filed.

(2) A claimant in an action not affecting the title to real property against which the lis pendens was filed is liable to an aggrieved party who prevails on a motion to cancel the lis pendens, for actual damages caused by filing the lis pendens, and for reasonable attorneys' fees incurred in canceling the lis pendens.

(3) Unless the claimant establishes a substantial justification for filing the lis pendens, a claimant is liable to an aggrieved party who prevails in defense of the action in which the lis pendens was filed for actual damages caused by filing the lis pendens, and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action.

Passed the House March 7, 1994.
 Passed the Senate March 1, 1994.
 Approved by the Governor March 30, 1994.
 Filed in Office of Secretary of State March 30, 1994.

CHAPTER 156

[Substitute House Bill 1122]

PARK AND RECREATION DISTRICTS AND SERVICE AREAS—LEVIES

AN ACT Relating to parks; amending RCW 36.69.140, 36.69.145, and 36.68.525; reenacting and amending RCW 36.68.520; and creating a new section.

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

NEW SECTION. Sec. 1. The intent of the legislature by enacting sections 2 through 5 of chapter . . . , Laws of 1994 (this act) is:

(1) To allow park and recreation districts and park and recreation service areas to place more than one excess levy on the same ballot, allowing districts and service areas to give voters the opportunity to vote on separate issues, such as for operating and capital funds, at the same election, thereby reducing election costs; and

(2) To increase the amount a park and recreation district or park and recreation service area may collect through a six-year property tax levy from a maximum of fifteen cents per thousand dollars of assessed value to a maximum of sixty cents per thousand dollars of assessed value. This would allow for a more stable funding source for park and recreation districts and park and recreation service areas at a realistic tax rate and reduce the need for holding excess levy elections on an annual or biannual basis. In addition, it would level out the collection of taxes over each of six years rather than the practice now of collecting in one year to fund two years.

Sec. 2. RCW 36.69.140 and 1984 c 186 s 30 are each amended to read as follows:

(1) A park and recreation district shall have the power to levy ~~((an))~~ excess ~~((levy))~~ levies upon the property included within the district, in the manner prescribed by Article VII, section 2, of the Constitution and by RCW 84.52.052~~((—Such excess levy may be either))~~ for operating funds ~~((or for)),~~ capital outlay funds, ~~((or for a))~~ and cumulative reserve funds.

(2) A park and recreation district may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015. A park and recreation district may additionally issue general obligation bonds, together with outstanding voter approved and nonvoter approved general obligation indebtedness, equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW

39.36.015, when such bonds are approved by three-fifths of the voters of the district at a general or special election called for that purpose and may provide for the retirement thereof by levies in excess of dollar rate limitations in accordance with the provisions of RCW 84.52.056. When authorized by the voters of the district, the district may issue interest bearing warrants payable out of and to the extent of excess levies authorized in the year in which the excess levy was approved. These elections shall be held as provided in RCW 39.36.050. Such bonds and warrants shall be issued and sold in accordance with chapter 39.46 RCW.

Sec. 3. RCW 36.69.145 and 1984 c 131 s 6 are each amended to read as follows:

(1) A park and recreation district may impose regular property tax levies in an amount equal to ~~((fifteen))~~ sixty cents or less per thousand dollars of assessed value of property in the district in each year for ~~((five))~~ six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted at a special election or at the regular election of the district, at which election the number of ~~((persons))~~ voters voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the ~~((total-votes-cast))~~ number of voters voting in such district at the last preceding general election when the number of ~~((electors))~~ voters voting on the proposition does not exceed forty per centum of the ~~((total-votes-cast))~~ number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the ~~((electors))~~ voters thereof voting on the proposition if the number of ~~((electors))~~ voters voting on the proposition exceeds forty per centum of the ~~((total-votes-cast))~~ number of voters voting in such taxing district in the last preceding general election. A proposition authorizing the tax levies shall not be submitted by a park and recreation district more than twice in any twelve-month period. Ballot propositions shall conform with RCW 29.30.111. In the event a park and recreation district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article 7, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the park and recreation district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced.

(2) The limitation in RCW 84.55.010 shall not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section.

Sec. 4. RCW 36.68.520 and 1984 c 186 s 29 and 1984 c 131 s 8 are each reenacted and amended to read as follows:

(1) A park and recreation service area shall have the power to levy ~~((an))~~ annual excess ~~((levy))~~ levies upon the property included within the service area

if authorized at a special election called for the purpose in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052((-

~~This excess levy may be either~~) for operating funds, ~~((or for))~~ capital outlay funds, ~~((or for a))~~ and cumulative reserve funds.

(2) A park and recreation service area may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the ~~((district))~~ service area. ~~((Such districts))~~ Additionally, a park and recreation service area may issue general obligation bonds, together with any outstanding voter approved and nonvoter approved general indebtedness, equal to two and one-half percent of the value of the taxable property within the ~~((district))~~ service area, as the term "value of the taxable property" is defined in RCW 39.36.015, when such bonds are approved by the voters of the ~~((district))~~ service area at a special election called for the purpose in accordance with the provisions of Article VIII, section 6 of the Constitution. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Bonds may be retired by excess property tax levies when such levies are approved by the voters at a special election in accordance with the provisions of Article VII, section 2 of the Constitution and RCW 84.52.056.

Any elections shall be held as provided in RCW 39.36.050.

Sec. 5. RCW 36.68.525 and 1984 c 131 s 9 are each amended to read as follows:

A park and recreation service area may impose regular property tax levies in an amount equal to ~~((fifteen))~~ sixty cents or less per thousand dollars of assessed value of property in the service area in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted not more than twelve months prior to the date on which the proposed initial levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of the service area, at which election the number of ~~((persons))~~ voters voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the ~~((total votes cast))~~ number of voters voting in the service area at the last preceding general election when the number of ~~((electors))~~ voters voting on the proposition does not exceed forty percent of the ~~((total votes cast))~~ number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the ~~((electors))~~ voters thereof voting on the proposition if the number of ~~((electors))~~ voters voting on the proposition exceeds forty per centum of the ~~((total votes cast))~~ number of voters voting in such taxing district in the last preceding general election. A proposition authorizing such tax levies shall not be submitted by a park and recreation ~~((district))~~ service area more than twice in any twelve-month period. Ballot propositions shall conform with RCW 29.30.111. If a park and recreation service area is levying property taxes, which

in combination with property taxes levied by other taxing districts result in taxes in excess of the nine-dollar and fifteen cents per thousand dollars of assessed valuation limitation provided for in RCW 84.52.043, the park and recreation service area property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced.

Passed the House March 5, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 157

[Engrossed House Bill 1756]

LICENSED ELECTRICIANS—EXEMPTIONS FROM REQUIREMENT TO USE

AN ACT Relating to exemptions from RCW 19.28.510 through 19.28.620; and amending RCW 19.28.610.

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

Sec. 1. RCW 19.28.610 and 1992 c 240 s 3 are each amended to read as follows:

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him(~~(+ PROVIDED, HOWEVER, That)~~) or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units. Nothing in RCW 19.28.510 through 19.28.620 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(~~((2))~~)(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade(~~(+ AND PROVIDED FURTHER, That)~~). RCW 19.28.510 through 19.28.620 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees(~~(+ AND PROVIDED FURTHER, That)~~). Nothing in RCW 19.28.510 through 19.28.620 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility

or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW 19.28.510 through 19.28.620 shall not apply to:

(1) Persons making electrical installations on their own property(~~(1)~~
~~(2))~~) or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease; or

~~((3))~~ (2) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.200 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work(~~(3)~~).

~~((AND PROVIDED FURTHER, That))~~

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter.

Passed the House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 158

[Substitute House Bill 1928]

REGIONAL TRANSPORTATION PLANNING—STUDY ON RELATIONSHIP OF STATE FACILITIES AND LOCAL PLANS

AN ACT Relating to regional transportation planning; amending RCW 47.80.030, 35.58.2795, 35.77.010, and 36.81.121; adding new sections to chapter 47.80 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec. 1. LEGISLATIVE INTENT.** The legislature recognizes that recent legislative enactments have significantly added to the complexity of and to the potential for benefits from integrated transportation and comprehensive planning and that there is currently a unique opportunity for integration of local comprehensive plans and regional goals with state and local transportation programs. Further, approaches to transportation demand management initiatives and local and state transportation funding can be better

coordinated to insure an efficient, effective transportation system that insures mobility and accessibility, and addresses community needs.

The legislature further finds that transportation and land use share a critical relationship that policy makers can better utilize to address regional strategies.

Prudent and cost-effective investment by the state and by local governments in highway facilities, local streets and arterials, rail facilities, marine facilities, nonmotorized transportation facilities and systems, public transit systems, transportation system management, transportation demand management, and the development of high capacity transit systems can help to effectively address mobility needs. Such investment can also enhance local and state objectives for effective comprehensive planning, economic development strategies, and clean air policies.

The legislature finds that addressing public initiatives regarding transportation and comprehensive planning necessitates an innovative approach. Improved integration between transportation and comprehensive planning among public institutions, particularly in the state's largest metropolitan areas is considered by the state to be imperative, and to have significant benefit to the citizens of Washington.

NEW SECTION. Sec. 2. ORGANIZATION'S DUTIES. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to section 3 of this act, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and

counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

NEW SECTION. Sec. 3. COMPREHENSIVE PLANS, TRANSPORTATION GUIDELINES, AND PRINCIPLES. Each regional transportation planning organization, with cooperation from component cities, towns, and counties, shall establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans, where such plans exist, and to assure that state, regional, and local goals for the development of transportation systems are met. These guidelines and principles shall address at a minimum the relationship between transportation systems and the following factors: Concentration of economic activity, residential density, development corridors and urban design that, where appropriate, supports high capacity transit, freight transportation and port access, development patterns that promote pedestrian and nonmotorized transportation, circulation systems, access to regional systems, effective and efficient highway systems, the ability of transportation facilities and programs to retain existing and attract new jobs and private investment and to accommodate growth in demand, transportation demand management, joint and mixed use developments, present and future railroad right-of-way corridor utilization, and intermodal connections.

Examples shall be published by the organization to assist local governments in interpreting and explaining the requirements of this section.

Sec. 4. RCW 47.80.030 and 1990 1st ex.s. c 17 s 55 are each amended to read as follows:

(1) Each regional transportation planning organization shall((:

~~(a) Certify that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region conform with the requirements of RCW 36.70A.070, and are consistent with regional transportation plans as provided for in (b) of this subsection;~~

~~(b)) develop ((and adopt)) in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that ((is consistent with county, city, and town comprehensive plans and state transportation plans. Regional transportation planning organizations are encouraged to use county, city, and town comprehen-~~

~~sive plans that existed prior to July 1, 1990, as the basis of its regional transportation plan whenever possible. Such plans shall address~~);

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs.

(b) Identifies existing or planned transportation facilities ~~(and)~~, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

- (i) Physically crosses member county lines;
- (ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;
- (iii) Significant impacts are expected to be felt in more than one county;
- (iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies; and
- (v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance;

~~(c) ((Designate a lead planning agency to coordinate preparation of the regional transportation plan. The lead planning agency may be a regional council, a county, city, or town agency, or a Washington state department of transportation district))~~ Establishes level of service standards at a minimum for all state highways and state ferry routes. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

- (i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency((+)) and

((+)) forward the adopted plan((,-and)) along with documentation of the biennial review ((of it-)) to the state department of transportation.

((2)) (3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies.

~~((3) In order to ensure state-wide consistency in the regional transportation planning process, the state department of transportation shall:~~

~~(a) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;~~

~~(b) Facilitate coordination between regional transportation planning organizations; and~~

~~(c) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or state-wide basis.))~~

NEW SECTION. Sec. 5. STATE-WIDE CONSISTENCY. In order to ensure state-wide consistency in the regional transportation planning process, the state department of transportation, in conformance with chapter 34.05 RCW, shall:

(1) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;

(2) Facilitate coordination between regional transportation planning organizations; and

(3) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or state-wide basis.

Sec. 6. RCW 35.58.2795 and 1990 1st ex.s. c 17 s 60 are each amended to read as follows:

By April 1st of each year, the legislative authority of each municipality, as defined in RCW 35.58.272, and each regional transit authority shall prepare a

six-year transit development ~~((and financial program))~~ plan for that calendar year and the ensuing five years. The program shall be consistent with the comprehensive plans adopted by counties, cities, and towns, pursuant to chapter 35.63, 35A.63, or 36.70 RCW, the inherent authority of a first class city or charter county derived from its charter, or chapter 36.70A RCW. The program shall contain information as to how the municipality intends to meet state and local long-range priorities for public transportation, capital improvements, significant operating changes planned for the system, and how the municipality intends to fund program needs. The six-year plan for each municipality and regional transit authority shall specifically set forth those projects of regional significance for inclusion in the transportation improvement program within that region. Each municipality and regional transit authority shall file the six-year program with the state department of transportation, the transportation improvement board, and cities, counties, and regional planning councils within which the municipality is located.

In developing its program, the municipality and the regional transit authority shall consider those policy recommendations affecting public transportation contained in the state transportation policy plan approved by the state transportation commission and, where appropriate, adopted by the legislature. The municipality shall conduct one or more public hearings while developing its program and for each annual update.

Sec. 7. RCW 35.77.010 and 1990 1st ex.s. c 17 s 59 are each amended to read as follows:

(1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive ~~((street))~~ transportation program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city ~~((street))~~ transportation needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive ~~((street))~~ transportation program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated ~~((street construction))~~ transportation program. The program may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

~~((The six-year program of each city lying within an urban area shall contain a separate section setting forth the six-year program for arterial street construc-~~

~~tion based upon its long range construction plan and formulated in accordance with rules of the transportation improvement board. The six year program for arterial street construction shall be submitted to the transportation improvement board forthwith after its annual revision and adoption by the legislative body of the city. The six year program for arterial street construction shall be based upon estimated revenues available for such construction together with such additional sums as the legislative authority may request for urban arterials from the urban arterial trust account or the transportation improvement account for the six year period. The arterial street construction program shall provide for a more rapid rate of completion of the long range construction needs of principal arterial streets than for minor and collector arterial streets, pursuant to rules of the transportation improvement board: PROVIDED, That urban arterial trust funds made available to the group of incorporated cities lying outside the boundaries of federally approved urban areas within each region need not be divided between functional classes of arterials but shall be available for any designated arterial street:))~~

The six-year plan for each city or town shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for ~~((bicycle, pedestrian, and equestrian))~~ nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the city's or town's jurisdiction.

Sec. 8. RCW 36.81.121 and 1990 1st ex.s. c 17 s 58 are each amended to read as follows:

(1) Before July 1st of each year, the legislative authority of each county ~~((with the advice and assistance of the county road engineer, and pursuant to)),~~ after one or more public hearings thereon, shall prepare and adopt a comprehensive ~~((road))~~ transportation program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work and other transportation facilities and programs deemed appropriate, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by

the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated (~~(road construction)~~) transportation program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

~~(2) ((The six-year program of each county having an urban area within its boundaries shall contain a separate section setting forth the six-year program for arterial road construction based upon its long-range construction plan and formulated in accordance with regulations of the transportation improvement board. The six-year program for arterial road construction shall be submitted to the transportation improvement board forthwith after its annual revision and adoption by the legislative authority of each county. The six-year program for arterial road construction shall be based upon estimated revenues available for such construction together with such additional sums as the legislative authority of each county may request for urban arterials from the urban arterial trust account or the transportation improvement account for the six-year period. The arterial road construction program shall provide for a more rapid rate of completion of the long-range construction needs of principal arterial roads than for minor and collector arterial roads, pursuant to regulations of the transportation improvement board.~~

~~(3))~~ Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for ~~((bicycles, pedestrians, and equestrian))~~ nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the county's jurisdiction.

(4) The six-year plan for each county shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region.

NEW SECTION. Sec. 9. The legislative transportation committee shall coordinate a comprehensive study on the appropriate relationship between state transportation facilities and local comprehensive plans. The legislative transportation committee shall appoint members to a steering committee that shall be comprised of representatives from the department of transportation, the department of community, trade, and economic development, regional transportation planning organizations, cities, counties, and the development community. The study shall, at a minimum, address:

(1) How state transportation facilities and services should be addressed in local comprehensive plans;

(2) Whether state transportation facilities should be included in local concurrency ordinances and the effectiveness of current methods provided for in

the Growth Management Act to address concurrency for state transportation facilities;

(3) The long-term effects on state transportation facilities resulting from the development of urban growth areas;

(4) The "specific actions and requirements" adopted by local jurisdictions to bring into compliance a state transportation facility or service that is below the established level of service as set forth in RCW 36.70A.070;

(5) The status and effectiveness of the access management program required by the 1991 legislature to promote a coordinated planning process for the permitting of access points on the state highway system;

(6) Appropriate methods for mitigating land use impacts on state transportation facilities and services;

(7) An analysis of funding alternatives including, but not limited to, consideration of state transportation improvement benefit districts; a state latecomer fee system; fees related to impacts generated under the State Environmental Policy Act; impact fees; allocation of state transportation resources; and other alternatives; and

(8) The appropriate relationship between state transportation programming and prioritization systems and level of service deficiencies.

The preliminary study findings shall be completed no later than December 15, 1994, and the final report shall be submitted no later than September 1, 1995. The report shall contain recommendations for improving the coordination of local land use decisions and state transportation decisions.

NEW SECTION. Sec. 10. Sections 1 through 3 and 5 of this act are each added to chapter 47.80 RCW.

NEW SECTION. Sec. 11. Captions used in this act do not constitute any part of the law.

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

NEW SECTION. Sec. 13. This act shall take effect July 1, 1994.

Passed the House March 5, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 159

[Substitute House Bill 2167]

THOROUGHBRED RACING FUND DISTRIBUTION

AN ACT Relating to thoroughbred race track gross receipts and licensing provisions; amending RCW 67.16.105 and 67.16.250; 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 the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from the effective date of this act until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington.

Sec. 2. RCW 67.16.105 and 1993 c 170 s 2 are each amended to read as follows:

(1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, all licensees shall forward one-tenth of one percent of the daily gross receipts of all parimutuel machines to the commission daily for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensees. The total of such payments shall not exceed one hundred fifty thousand dollars in any one year and any amount in excess of one hundred fifty thousand dollars shall be remitted to the general fund. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(4) In addition to those sums paid to the commission in subsection (2) of this section, licensees who are nonprofit corporations and have race meets of thirty days or more shall ~~((withhold and pay to the commission daily for each authorized day of racing))~~ retain and dedicate: (a) An amount equal to one and one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be used solely for the purpose of increasing purses; and (b) an amount equal to one and one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington. Said percentages shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). ~~((The commission shall deposit these moneys in the Washington thoroughbred racing fund created in RCW 67.16.250.~~

~~(5) The additional one and one-quarter percent of the moneys allowed to be retained by this section must be used for increased purses.)~~ The commission shall adopt such rules as may be necessary to enforce this subsection. The provisions of this subsection shall apply through June 1, 1995.

(5) In the event the new racetrack is not constructed before January 1, 2001, all funds including interest, remaining in the escrow or trust account established in subsection (4) of this section, shall revert to the state general fund.

(6) Effective ~~((January 1, 1994, the amount of daily gross receipts withheld and paid to the commission, as set out in subsection (4) of this section, shall revert to two and one-half percent of the daily gross receipts of all parimutuel machines at each race meet))~~ June 1, 1995, licensees who are nonprofit corporations and have race meets of thirty days or more shall withhold and pay to the commission daily for each authorized day of racing an amount equal to two and one-half percent of the daily gross receipts of all parimutuel machines at each race meet. These percentages shall come from the amount that the licensee is authorized to retain under RCW 67.16.170(2) and shall be in addition to those sums paid to the commission in subsection (2) of this section. The commission shall deposit these moneys in the Washington thoroughbred racing fund created in RCW 67.16.250.

Sec. 3. RCW 67.16.250 and 1991 c 270 s 12 are each amended to read as follows:

The Washington thoroughbred racing fund is created in the state treasury. Effective June 1, 1995, all receipts derived under RCW 67.16.105~~((4))~~ (6) from licensees who are nonprofit corporations and whose race meets are thirty days or more shall be deposited into the account. Moneys in the account may be spent only after legislative appropriation. Expenditures from the account shall be expended to benefit and support interim continuation of thoroughbred racing, capital construction of a new race track facility, and programs enhancing the general welfare, safety, and advancement of the Washington thoroughbred racing industry.

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 House March 6, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 160

[Engrossed House Bill 2190]

HOUSING TRUST FUND—USE OF MONEYS

AN ACT Relating to the housing trust fund; and amending RCW 43.185.050, 43.185.060, 43.185A.030, and 43.185A.040.

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

Sec. 1. RCW 43.185.050 and 1991 c 356 s 4 are each amended to read as follows:

(1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department (~~(of community development)~~). If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

- (h) Mortgage insurance guarantee or payments for eligible projects;
- (i) Down payment or closing cost assistance for eligible first-time home buyers;
- (j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and
- (k) Projects making housing more accessible to families with members who have disabilities.

(3) ~~Legislative appropriations from capital bond proceeds ((and moneys from repayment of loans from appropriations from capital bond proceeds))~~ may be used only for the costs of projects authorized under subsection (2) (a), (i), and (j) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2) (b) and (c) of this section.

(5) Administrative costs of the department shall not exceed four percent of the annual funds available for the housing assistance program.

Sec. 2. RCW 43.185.060 and 1991 c 295 s 1 are each amended to read as follows:

Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, regional support networks established under chapter 71.24 RCW, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or state-wide nonprofit housing assistance organizations.

Eligibility for assistance from the department under this chapter also requires compliance with the revenue and taxation laws, as applicable to the recipient, at the time the grant is made.

Sec. 3. RCW 43.185A.030 and 1991 c 356 s 12 are each amended to read as follows:

(1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

- (a) New construction, rehabilitation, or acquisition of housing for low-income households;
- (b) Rent subsidies in new construction or rehabilitated multifamily units;
- (c) Down payment or closing costs assistance for first-time home buyers;
- (d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
- (e) Mortgage insurance guarantee or payments for eligible projects.

(3) ~~Legislative appropriations from capital bond proceeds ((and moneys from repayment of loans from appropriations from capital bond proceeds))~~ may be

used only for the costs of projects authorized under subsection (2) (a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs of the department shall not exceed four percent of the annual funds available for the affordable housing program.

Sec. 4. RCW 43.185A.040 and 1991 c 356 s 13 are each amended to read as follows:

Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or state-wide nonprofit housing assistance organizations.

Eligibility for assistance from the department under this chapter also requires compliance with the revenue and taxation laws, as applicable to the recipient, at the time the grant is made.

- Passed the House March 9, 1994.
- Passed the Senate March 9, 1994.
- Approved by the Governor March 30, 1994.
- Filed in Office of Secretary of State March 30, 1994.

CHAPTER 161

[Substitute House Bill 2226]

SOLID WASTE COLLECTION COMPANIES—RATE INCREASE NOTICE

AN ACT Relating to solid waste handling; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 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 local governments and private waste management companies have significantly changed solid waste management services in an effort to preserve landfill space and to avoid costly environmental cleanups of municipal landfills. The legislature recognizes that these new services have enabled the state to achieve one of the nation's highest recycling rates.

The legislature also finds that the need to pay for the cleanup of past disposal practices and to provide new recycling services has caused solid waste rates to increase substantially. The legislature further finds that private solid waste collection companies regulated by the utilities and transportation commission are required to provide public notice but that city-managed solid waste collection systems are not. The legislature declares it to be in the public

interest for city-managed systems to provide public notice of solid waste rate increases.

NEW SECTION. Sec. 2. A new section is added to chapter 35.21 RCW to read as follows:

(1) A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

(2) For purposes of this section, "solid waste handling" has the same meaning as provided in RCW 70.95.030.

NEW SECTION. Sec. 3. A new section is added to chapter 35A.21 RCW to read as follows:

(1) A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

(2) For purposes of this section, "solid waste handling" has the same meaning as provided in RCW 70.95.030.

Passed the House February 8, 1994.

Passed the Senate March 7, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 162

[House Bill 2333]

CUSTODIAL INTERFERENCE

AN ACT Relating to custodial interference; amending RCW 9A.40.060 and 26.09.165; and prescribing penalties.

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

Sec. 1. RCW 9A.40.060 and 1984 c 95 s 1 are each amended to read as follows:

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent

person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and:

(a) Intends to hold the child permanently or for a protracted period; or

(b) Exposes the child to a substantial risk or illness or physical injury; or

(c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

~~((3))~~ (4) Custodial interference in the first degree is a class C felony.

Sec. 2. RCW 26.09.165 and 1989 c 318 s 4 are each amended to read as follows:

All court orders containing parenting plan provisions or orders of contempt, entered pursuant to RCW 26.09.160, shall include the following language:

WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.060(2) or 9A.40.070(2). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

Passed the House February 14, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 163

[Substitute House Bill 2351]

STRAY LOGS RECOVERY

AN ACT Relating to the recovery of stray logs; amending RCW 76.36.110, 76.42.020, 76.42.030, and 82.16.010; creating a new section; and repealing RCW 76.40.010, 76.40.012, 76.40.013, 76.40.020, 76.40.030, 76.40.040, 76.40.050, 76.40.060, 76.40.070, 76.40.080, 76.40.090, 76.40.100, 76.40.110, 76.40.120, 76.40.130, 76.40.135, 76.40.140, 76.40.145, 76.40.900, and 76.40.910.

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

Sec. 1. RCW 76.36.110 and 1984 c 60 s 6 are each amended to read as follows:

Every person:

(1) Except boom companies (~~and log patrol companies~~) organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner; is guilty of a gross misdemeanor.

Sec. 2. RCW 76.42.020 and 1973 c 136 s 3 are each amended to read as follows:

"Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or

~~((navigable [tidal]))~~ tidal and shorelands and which is not merchantable or economically salvageable under ~~((the Log Patrol Act,))~~ chapter 76.40 RCW.

"Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner.

Sec. 3. RCW 76.42.030 and 1973 c 136 s 4 are each amended to read as follows:

The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by ~~((licensed log patrolmen, other))~~ private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchantable wood debris for his own personal use.

Sec. 4. RCW 82.16.010 and 1991 c 272 s 14 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not

limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, (~~log patrol,~~) pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

NEW SECTION. Sec. 5. The department of natural resources shall convene a discussion between persons representative of the various interested parties including, but not limited to, log owners, transportation companies, recreational boaters, property owners, port authorities, local law enforcement

agencies, and state agencies charged with the management and protection of aquatic resources to review issues related to stray log recovery.

On or before October 31, 1994, the department of natural resources shall report proposed guidelines for the recovery of adrift stray logs, to provide for the protection of: (1) Life, property, and navigational safety; and (2) the environment and publicly owned aquatic resources.

NEW SECTION. Sec. 6. REPEALER. The following acts or parts of acts are each repealed:

- (1) RCW 76.40.010 and 1984 c 60 s 9 & 1957 c 182 s 1;
- (2) RCW 76.40.012 and 1984 c 60 s 10, 1955 c 108 s 1, & 1953 c 140 s 2;
- (3) RCW 76.40.013 and 1984 c 60 s 11 & 1957 c 182 s 9;
- (4) RCW 76.40.020 and 1984 c 60 s 12, 1957 c 182 s 2, 1955 c 27 s 1, 1953 c 140 s 9, & 1947 c 116 s 1;
- (5) RCW 76.40.030 and 1984 c 60 s 13, 1979 ex.s. c 67 s 13, 1963 c 12 s 1, 1957 c 182 s 3, 1955 c 108 s 3, 1953 c 140 s 10, & 1947 c 116 s 3;
- (6) RCW 76.40.040 and 1984 c 60 s 14, 1957 c 182 s 4, & 1947 c 116 s 5;
- (7) RCW 76.40.050 and 1984 c 60 s 15, 1957 c 182 s 5, 1953 c 140 s 11, & 1947 c 116 s 5;
- (8) RCW 76.40.060 and 1982 c 35 s 199 & 1947 c 116 s 6;
- (9) RCW 76.40.070 and 1984 c 60 s 16, 1957 c 182 s 6, & 1947 c 116 s 8;
- (10) RCW 76.40.080 and 1984 c 60 s 17 & 1947 c 116 s 9;
- (11) RCW 76.40.090 and 1947 c 116 s 10;
- (12) RCW 76.40.100 and 1984 c 60 s 18 & 1947 c 116 s 11;
- (13) RCW 76.40.110 and 1957 c 182 s 7, 1953 c 140 s 12, & 1947 c 116 s 12;
- (14) RCW 76.40.120 and 1984 c 60 s 19 & 1947 c 116 s 14;
- (15) RCW 76.40.130 and 1947 c 116 s 13;
- (16) RCW 76.40.135 and 1984 c 60 s 20;
- (17) RCW 76.40.140 and 1984 c 60 s 21;
- (18) RCW 76.40.145 and 1984 c 60 s 22;
- (19) RCW 76.40.900 and 1947 c 116 s 15; and
- (20) RCW 76.40.910 and 1947 c 116 s 16.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 164

[Engrossed House Bill 2390]

DEPARTMENT OF LABOR AND INDUSTRIES FUNCTIONS AND RESPONSIBILITIES

AN ACT Relating to clarifications in the organizational structure of the department of labor and industries specific to current departmental functions and responsibilities; amending RCW 15.24.086, 43.22.010, 43.22.020, 43.22.030, 43.22.040, 43.22.050, 43.22.053, 43.22.200, 43.22.210, 43.22.260, 43.22.270, 43.78.150, 49.12.005, 49.12.041, 49.12.050, 49.12.091, 49.12.101, 49.12.105, 49.12.110, 49.12.140, 49.12.170, 49.12.180, 49.24.070, 51.04.020, 51.16.105, 70.79.120, and 70.87.030; reenacting and amending RCW 51.04.030; and repealing RCW 49.12.035, 49.12.125, and 49.12.161.

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

Sec. 1. RCW 15.24.086 and 1973 1st ex.s. c 154 s 20 are each amended to read as follows:

All such printing contracts provided for in this section and RCW 15.24.085 shall be executed and performed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the ~~((industrial welfare committee))~~ department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof.

Sec. 2. RCW 43.22.010 and 1974 ex.s. c 27 s 1 are each amended to read as follows:

The department of labor and industries shall be organized into ~~((five divisions, to be known as, (1) the division of industrial insurance, (2) the division of industrial safety and health, (3) the division of industrial relations, (4) the division of apprenticeship, and (5) the division of building and construction safety inspection services, which division shall have responsibility for electrical inspection, mobile home inspection, elevator inspection, except as otherwise provided in RCW 70.87.030, boiler inspection, and registration and regulation of contractors))~~ divisions that promote efficient and effective performance of the duties the agency is charged by statute to administer.

The director may appoint such clerical and other assistants as may be necessary for the general administration of the department.

Sec. 3. RCW 43.22.020 and 1965 c 8 s 43.22.020 are each amended to read as follows:

The director of labor and industries shall appoint and deputize an assistant ~~((director)),~~ to be known as the supervisor of industrial insurance, who shall have ~~((charge and supervision of the division of industrial insurance))~~ authority to perform those duties delegated by the director and by statute.

~~((With the approval of))~~ The director((-he)) may appoint and employ such adjusters, medical and other examiners, auditors, inspectors, clerks, and other assistants as may be necessary to ((carry on the work of the division)) the administration of workers' compensation and medical aid in this state.

Sec. 4. RCW 43.22.030 and 1987 c 185 s 16 are each amended to read as follows:

The director of labor and industries(~~(, through the division of industrial insurance,))~~ shall:

(1) Exercise all the powers and perform all the duties prescribed by law with respect to the administration of workers' compensation and medical aid in this state;

(2) Have the custody of all property acquired by the state at execution sales upon judgments obtained for delinquent industrial insurance premiums or medical aid contributions, and penalties and costs; sell and dispose of the same at private sales for the sale purchase price, and pay the proceeds into the state treasury to the credit of the accident fund, or medical aid fund, as the case may be. In case of the sale of real estate the director shall execute the deed in the name of the state.

Sec. 5. RCW 43.22.040 and 1973 1st ex.s. c 52 s 3 are each amended to read as follows:

The director of labor and industries shall appoint and deputize an assistant (~~(director)),~~ to be known as the supervisor of industrial safety and health, who shall have (~~charge and supervision of the division of industrial safety and health~~) authority to perform those duties delegated by the director and by statute.

The (~~supervisor of industrial safety and health, with the approval of the~~) director(~~;~~) may appoint and employ such inspectors, clerks, and other assistants as may be necessary to carry on the industrial safety and health work of the (~~division~~) department.

Sec. 6. RCW 43.22.050 and 1973 1st ex.s. c 52 s 4 are each amended to read as follows:

The director of labor and industries(~~(, through the division of industrial safety and health,))~~ shall:

(1) Exercise all the powers and perform all the duties prescribed by law in relation to the inspection of factories, mills, workshops, storehouses, warerooms, stores and buildings, and the machinery and apparatus therein contained, and steam vessels, and other vessels operated by machinery, and in relation to the administration and enforcement of all laws and safety standards providing for the protection of employees in mills, factories, workshops, and in employments subject to the provisions of Title 51 RCW, and in relation to the enforcement, inspection, certification, and promulgation of safe places and safety device standards in all industries: PROVIDED, HOWEVER, This section shall not apply to railroads;

(2) Exercise all the powers and perform all the duties prescribed by law in relation to the inspection of tracks, bridges, structures, machinery, equipment, and apparatus of street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, with respect to the safety of employees, and the administration and enforcement of all laws

providing for the protection of employees of street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities;

(3) Exercise all the powers and perform all the duties prescribed by law in relation to the enforcement, amendment, alteration, change, and making additions to, rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof.

Sec. 7. RCW 43.22.053 and 1969 ex.s. c 32 s 3 are each amended to read as follows:

The director of labor and industries shall appoint and deputize an assistant (~~(director)~~), to be known as the supervisor (~~(of the division)~~) of building and construction safety inspection services, who shall have (~~(charge and supervision of the division of building and construction safety inspection services)~~) authority to perform those duties delegated by the director and by statute.

(~~With the approval of~~) The director(~~(, he)~~) may appoint and employ such inspectors, clerks, and other assistants as may be necessary to carry on (~~(the work of the division)~~) building and construction safety inspection services subject to the provisions of chapter 41.06 RCW.

Sec. 8. RCW 43.22.200 and 1973 1st ex.s. c 52 s 5 are each amended to read as follows:

The supervisor of (~~(the division of)~~) industrial safety and health or (~~(his)~~) the supervisor's deputy shall enter, inspect, and examine any coal mine, and the workings and the machinery belonging thereto, at all reasonable times, either day or night, but not so as to impede the working of the mine. They shall make inquiry into the condition of the mine, workings, machinery, ventilation, drainage, method of lighting or using lights, and into all methods and things relating to the health and safety of persons employed in or about the mine, and especially make inquiry whether or not the provisions of the coal mining code have been complied with. The management of each mine shall furnish the means necessary for such entry, inspection, examination, and exit.

Sec. 9. RCW 43.22.210 and 1989 c 12 s 14 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 the supervisor's deputy to carefully examine each coal mine in operation in this state at least every four months, and (~~(as much oftener)~~) more often as is necessary, to see that every precaution is taken to (~~(insure)~~) ensure the safety of all 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 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 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 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 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 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 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 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 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. 10. RCW 43.22.260 and 1975 1st ex.s. c 296 s 31 are each amended to read as follows:

The director of labor and industries shall appoint and deputize an assistant ~~((director))~~, to be known as the supervisor of industrial relations, who shall have ~~((charge and supervision of the division of industrial relations))~~ authority to perform those duties delegated by the director and by statute.

~~((With the approval of))~~ The director~~((, he))~~ may appoint an assistant to be known as the industrial statistician, and an assistant to be known as the supervisor of employment standards and may appoint and employ experts, clerks, and other assistants as may be necessary to carry on the industrial relations work of the ~~((division))~~ department.

Sec. 11. RCW 43.22.270 and 1977 c 75 s 48 are each amended to read as follows:

The director of labor and industries shall have the power, and it shall be ~~((his))~~ the director's duty~~((, through and by means of the division of industrial relations))~~:

(1) To study and keep in touch with problems of industrial relations and, from time to time, make public reports and recommendations to the legislature;

(2) To, with the assistance of the industrial statistician, exercise all the powers and perform all the duties in relation to collecting, assorting, and systematizing statistical details relating to labor within the state and systematizing such statistical information to, as far as possible, conform to the plans and reports of the United States department of labor;

(3) To, with the assistance of the industrial statistician, make such special investigations and collect such special statistical information as may be needed for use by the department or division of the state government having need of industrial statistics;

(4) To, with the assistance of the supervisor of employment standards, supervise the administration and enforcement of all laws respecting the employment and relating to the health, sanitary conditions, surroundings, hours of labor, and wages of employees employed in business and industry in accordance with the provisions of chapter 49.12 RCW;

(5) To exercise all the powers and perform all the duties, not specifically assigned to ~~((any other division of))~~ the department of labor and industries, now vested in, and required to be performed by, the commissioner of labor;

(6) To exercise such other powers and perform such other duties as may be provided by law.

Sec. 12. RCW 43.78.150 and 1973 1st ex.s. c 154 s 86 are each amended to read as follows:

All contracts for such work to be done outside the state shall require that it be executed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the ~~((industrial welfare committee))~~ department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and shall be favorably comparable to the labor standards and practices of the lowest competent bidder within the state, and the violation of any such provision of any contract shall be ground for cancellation thereof.

Sec. 13. RCW 49.12.005 and 1988 c 236 s 8 are each amended to read as follows:

For the purposes of this chapter:

- (1) The term "department" means the department of labor and industries.
- (2) The term "director" means the director of the department of labor and industries, or ~~((his))~~ the director's designated representative.
- (3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees and for the purposes of RCW 49.12.270 through 49.12.295 also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.
- (4) The term "employee" means an employee who is employed in the business of ~~((his))~~ the employee's employer whether by way of manual labor or otherwise.
- (5) The term "conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.
- (6) For the purpose of this 1973 amendatory act a minor is defined to be a person of either sex under the age of eighteen years.
- ~~((7) The term "committee" shall mean the industrial welfare committee.))~~

Sec. 14. RCW 49.12.041 and 1973 2nd ex.s. c 16 s 5 are each amended to read as follows:

It shall be the responsibility of the ~~((industrial welfare committee, with the aid and assistance of the))~~ director~~((;))~~ to investigate the wages, hours and conditions of employment of all employees, including minors, except as may otherwise be provided in this 1973 amendatory act. The director, or ~~((his))~~ the director's authorized representative, shall have full authority to require statements from all employers, relative to wages, hours and working conditions and to inspect the books, records and physical facilities of all employers subject to this 1973 amendatory act. Such examinations shall take place within normal working hours, within reasonable limits and in a reasonable manner.

Sec. 15. RCW 49.12.050 and 1973 2nd ex.s. c 16 s 14 are each amended to read as follows:

Every employer shall keep a record of the names of all employees employed by him, and shall on request permit the ~~((committee or any of its members or authorized representatives))~~ director to inspect such record.

Sec. 16. RCW 49.12.091 and 1973 2nd ex.s. c 16 s 6 are each amended to read as follows:

After an investigation has been conducted by the ~~((director of labor and industries))~~ department of wages, hours and conditions of labor subject to this

1973 amendatory act, the (~~(industrial welfare committee)~~) director shall be furnished with all information relative to such investigation of wages, hours and working conditions, including current statistics on wage rates in all occupations subject to the provisions of this 1973 amendatory act. Within a reasonable time thereafter, if the (~~(committee)~~) director finds that in any occupation, trade or industry, subject to this 1973 amendatory act, the wages paid to employees are inadequate to supply the necessary cost of living, but not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended, or that the conditions of labor are detrimental to the health of employees, the (~~(committee)~~) director shall have authority to prescribe rules and regulations for the purpose of adopting minimum wages for occupations not otherwise governed by minimum wage requirements fixed by state or federal statute, or a rule or regulation (~~(promulgated pursuant to)~~) adopted under such statute, and, at the same time have the authority to prescribe rules and regulations fixing standards, conditions and hours of labor for the protection of the safety, health and welfare of employees for all or specified occupations subject to this 1973 amendatory act. Thereafter, the (~~(committee)~~) director shall conduct a public hearing in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, for the purpose of the adoption of rules and regulations fixing minimum wages and standards, conditions and hours of labor subject to the provisions of this act. After such rules become effective, copies thereof shall be supplied to employers who may be affected by such rules and such employers shall post such rules, where possible, in such place or places, reasonably accessible to all employees of such employer. After the effective date of such rules, it shall be unlawful for any employer in any occupation subject to this 1973 amendatory act to employ any person for less than the rate of wages specified in such rules or under conditions and hours of labor prohibited for any occupation specified in such rules: PROVIDED, That this section shall not apply to sheltered work-shops.

Sec. 17. RCW 49.12.101 and 1973 2nd ex.s. c 16 s 7 are each amended to read as follows:

Whenever wages, standards, conditions and hours of labor have been established by rule and regulation of the (~~(committee)~~) director, the (~~(committee)~~) director may upon application of either employers or employees conduct a public hearing for the purpose of the adoption, amendment or repeal of rules and regulations (~~(promulgated)~~) adopted under the authority of this 1973 amendatory act.

Sec. 18. RCW 49.12.105 and 1973 2nd ex.s. c 16 s 8 are each amended to read as follows:

An employer may apply to the (~~(committee)~~) director for an order for a variance from any rule or regulation establishing a standard for wages, hours, or conditions of labor (~~(promulgated)~~) adopted by the (~~(committee)~~) director under this chapter. The (~~(committee)~~) director shall issue an order granting a variance

if ~~((#))~~ the director determines or decides that the applicant for the variance has shown good cause for the lack of compliance. Any order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, standards and processes which ~~((he))~~ the employer must adopt and utilize to the extent they differ from the standard in question. At any time the ~~((committee))~~ director may terminate and revoke such order, provided the employer was notified by the ~~((committee))~~ director of the termination at least thirty days prior to said termination.

Sec. 19. RCW 49.12.110 and 1977 ex.s. c 80 s 35 are each amended to read as follows:

For any occupation in which a minimum wage has been established, the ~~((committee through its secretary))~~ director may issue to an employer, a special certificate or permit for an employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the ~~((committee))~~ director shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the ~~((committee))~~ director may decide the same is applied for in good faith and that such certificate or permit shall be in force for such length of time as the ~~((said committee))~~ director shall decide and determine is proper.

Sec. 20. RCW 49.12.140 and 1913 c 174 s 17 1/2 are each amended to read as follows:

Any worker or the parent or guardian of any minor to whom RCW 49.12.010 through 49.12.180 applies may complain to the ~~((committee))~~ director that the wages paid to the workers are less than the minimum rate and the ~~((committee))~~ director shall investigate the same and proceed under RCW 49.12.010 through 49.12.180 in behalf of the worker.

Sec. 21. RCW 49.12.170 and 1991 c 303 s 6 are each amended to read as follows:

Except as otherwise provided in RCW 49.12.390 or 49.12.410, any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the ~~((committee))~~ director; or violating any other of the provisions of this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars.

Sec. 22. RCW 49.12.180 and 1977 c 75 s 73 are each amended to read as follows:

The ~~((committee))~~ director shall report annually to the governor on its investigations and proceedings.

Sec. 23. RCW 49.24.070 and 1973 1st ex.s. c 52 s 7 are each amended to read as follows:

The director of labor and industries (~~((through and by means of the division of industrial safety and health))~~) shall have the power and it shall be ~~((his))~~ the director's duty to enforce the provisions of RCW 49.24.010 through 49.24.070. Any authorized inspector or agent of the ~~((division of industrial safety and health))~~ department may issue and serve upon the employer or person in charge of such work, an order requiring compliance with a special provision or specific provisions of RCW 49.24.010 through 49.24.070 and directing the discontinuance of any employment of persons in compressed air in connection with such work until such specific provision or provisions have been complied with by such employer to the satisfaction of the ~~((division of industrial safety and health))~~ department.

Sec. 24. RCW 51.04.020 and 1977 c 75 s 77 are each amended to read as follows:

The director shall:

(1) Establish and ~~((promulgate))~~ adopt rules governing the administration of this title;

(2) Ascertain and establish the amounts to be paid into and out of the accident fund;

(3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;

(4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;

(5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;

(6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;

(7) ~~((Create a division of))~~ Compile statistics ~~((within))~~ which ~~((shall be compiled such statistics as))~~ will afford reliable information upon which to base operations of all divisions under the department;

(8) Make an annual report to the governor of the workings of the department;

(9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada.

Sec. 25. RCW 51.04.030 and 1993 c 515 s 1 and 1993 c 159 s 1 are each reenacted and 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 physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, and including chiropractic care, 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)~~) adopt 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 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, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, 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. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(15).

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)~~) adopted rules, regulations, established fee schedules, 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, regulations, or the established fee schedules and rules and regulations (~~(promulgated)~~) adopted under it.

Sec. 26. RCW 51.16.105 and 1977 ex.s. c 350 s 27 are each amended to read as follows:

All department expenses (~~(of the)~~) relating to industrial safety and health (~~(division)~~) services of the department pertaining to workers' compensation shall

be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title.

Sec. 27. RCW 70.79.120 and 1951 c 32 s 12 are each amended to read as follows:

The (~~chief inspector~~) director shall employ deputy inspectors (~~who shall be responsible to the chief inspector and~~) who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170.

Sec. 28. RCW 70.87.030 and 1983 c 123 s 3 are each amended to read as follows:

The department shall administer this chapter through the (~~division~~) supervisor of building and construction safety inspection services. However, except for the new construction thereof, all hand-powered elevators, belt manlifts, and one-man capacity manlifts installed in or on grain elevators are the responsibility of the (~~division~~) supervisor of industrial safety and health of the department. The department shall adopt rules governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

NEW SECTION. **Sec. 29.** The following acts or parts of acts are each repealed:

- (1) RCW 49.12.035 and 1973 2nd ex.s. c 16 s 10;
- (2) RCW 49.12.125 and 1913 c 174 s 15; and
- (3) RCW 49.12.161 and 1973 2nd ex.s. c 16 s 9.

Passed the House February 14, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 165

[Engrossed Substitute House Bill 2401]

RESIDENTIAL SHARPS WASTE

AN ACT Relating to the containerization and source separation of residential sharps waste; amending RCW 70.95K.010; adding new sections to chapter 70.95K RCW; adding a new section to chapter 70.95 RCW; 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 finds that the improper disposal and labeling of sharps waste from residences poses a potential health risk and perceived threat to the waste generators, public, and workers in the waste and recycling industry. The legislature further finds that a uniform method for handling sharps waste generated at residences will reduce confusion and injuries, and enhance public and waste worker confidence.

It is the purpose and intent of this act that residential generated sharps waste be contained in easily identified containers and separated from the regular solid waste stream to ensure worker safety and promote proper disposal of these wastes in a manner that is environmentally safe and economically sound.

Sec. 2. RCW 70.95K.010 and 1992 c 14 s 2 are each amended to read as follows:

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

(1) "Biomedical waste" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy.

"Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

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

(3) "Local health department" means the city, county, city-county, or district public health department.

(4) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, or local government.

(5) "Treatment" means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease.

(6) "Residential sharps waste" has the same meaning as "sharps waste" in subsection (1) of this section except that the sharps waste is generated and prepared for disposal at a residence, apartment, dwelling, or other noncommercial habitat.

(7) "Sharps waste container" means a leak-proof, rigid, puncture-resistant red container that is taped closed or tightly lidded to prevent the loss of the residential sharps waste.

(8) "Mail programs" means those programs that provide sharps users with a multiple barrier protection kit for the placement of a sharps container and subsequent mailing of the wastes to an approved disposal facility.

(9) "Pharmacy return programs" means those programs where sharps containers are returned by the user to designated return sites located at a pharmacy to be transported by a biomedical or solid waste collection company approved by the utilities and transportation commission.

(10) "Drop-off programs" means those program sites designated by the solid waste planning jurisdiction where sharps users may dispose of their sharps containers.

(11) "Source separation" has the same meaning as in RCW 70.95.030.

(12) "Unprotected sharps" means residential sharps waste that are not disposed of in a sharps waste container.

NEW SECTION. Sec. 3. A new section is added to chapter 70.95K RCW to read as follows:

(1) A person shall not intentionally place unprotected sharps or a sharps waste container into: (a) Recycling containers provided by a city, county, or solid waste collection company, or any other recycling collection site unless that site is specifically designated by a local health department as a drop-off site for sharps waste containers; or (b) cans, carts, drop boxes, or other containers in which refuse, trash, or solid waste has been placed for collection if a source separated collection service is provided for residential sharps waste.

(2) Local health departments shall enforce this section, primarily through an educational approach regarding proper disposal of residential sharps. On the first and second violation, the health department shall provide a warning to the person that includes information on proper disposal of residential sharps. A subsequent violation shall be a class 3 infraction under chapter 7.80 RCW.

(3) It is not a violation of this section to place a sharps waste container into a household refuse receptacle if the utilities and transportation commission determines that such placement is necessary to reduce the potential for theft of the sharps waste container.

NEW SECTION. Sec. 4. A new section is added to chapter 70.95K RCW to read as follows:

(1) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers in conjunction with regular collection services.

(2) A company collecting source separated residential sharps waste containers shall notify the public, in writing, on the availability of this service. Notice shall occur at least forty-five days prior to the provision of this service and shall include the following information: (a) How to properly dispose of residential sharps waste; (b) how to obtain sharps waste containers; (c) the cost of the program; (d) options to home collection of sharps waste; and (e) the legal requirements of residential sharps waste disposal.

(3) A company under the jurisdiction of the utilities and transportation commission may provide the service authorized under subsection (1) of this section only under tariff.

The commission may require companies collecting sharps waste containers to implement practices that will protect the containers from theft.

NEW SECTION. Sec. 5. A new section is added to chapter 70.95 RCW to read as follows:

(1) A solid waste planning jurisdiction may designate sharps waste container drop-off sites.

(2) A pharmacy return program shall not be considered a solid waste handling facility and shall not be required to obtain a solid waste permit. A pharmacy return program is required to register, at no cost, with the department. To facilitate designation of sharps waste drop-off sites, the department shall share the name and location of registered pharmacy return programs with jurisdictional health departments and local solid waste management officials.

(3) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers as provided in chapter 70.95K RCW.

(4) For the purpose of this section, "sharps waste", "sharps waste container", and "pharmacy return program" shall have the same meanings as provided in RCW 70.95K.010.

NEW SECTION. **Sec. 6.** Section 3 of this act shall take effect July 1, 1995.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 166

[House Bill 2447]

EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM—REVISIONS

AN ACT Relating to clarifying the statutory language governing the early childhood education and assistance program; amending RCW 28A.215.100, 28A.215.110, 28A.215.120, 28A.215.130, 28A.215.150, 28A.215.160, 28A.215.170, 28A.215.180, and 28A.215.200; amending 1988 c 174 s 1 (uncodified); amending 1987 c 518 s 1 (uncodified); and providing an effective date.

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

Sec. 1. RCW 28A.215.100 and 1985 c 418 s 1 are each amended to read as follows:

It is the intent of the legislature to establish ~~((a-preschool))~~ an early childhood state education and assistance program. This special assistance program is a voluntary enrichment program to help prepare some children to enter the common school system and shall be offered only as funds are available. This program is not a part of the basic program of education which must be fully funded by the legislature under Article IX, section 1 of the state Constitution.

Sec. 2. RCW 28A.215.110 and 1990 c 33 s 213 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908.

(1) "Advisory committee" means the advisory committee under RCW 28A.215.140.

(2) ~~((“At risk” means a child not eligible for kindergarten whose family circumstances would qualify that child for eligibility under the federal head start program.~~

~~(3))~~ "Department" means the department of community, trade, and economic development.

~~((4))~~ (3) "Eligible child" means ~~((an-at-risk child as defined in this section))~~ a child not eligible for kindergarten whose family income is at or below one hundred percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing ~~((like-educational))~~ comprehensive services and may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment

in the ~~((preschool))~~ early childhood program. Priority for enrollment shall be given to children from families with the lowest income or to eligible children from families with multiple needs.

~~((5))~~ (4) "Approved ~~((preschool))~~ programs" means those state-supported education and special assistance programs which are recognized by the department of community, trade, and economic development as meeting the minimum program rules adopted by the department to qualify under RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908 and are designated as eligible for funding by the department under RCW 28A.215.160 and 28A.215.180.

(5) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(6) "Family support services" means providing opportunities for parents to:

- (a) Actively participate in their child's early childhood program;
- (b) Increase their knowledge of child development and parenting skills;
- (c) Further their education and training;
- (d) Increase their ability to use needed services in the community;
- (e) Increase their self-reliance.

Sec. 3. 1988 c 174 s 1 (uncodified) is amended to read as follows:

The legislature finds that the early childhood education and assistance program provides for the educational, social, health, nutritional, and cultural development of children at risk of failure when they reach school age. The long-term benefits to society in the form of greater educational attainment, employment, and projected lifetime earnings as well as the savings to be realized, from lower crime rates, welfare support, and reduced teenage pregnancy, have been demonstrated through lifelong research of at-risk children and ~~((preschool))~~ early childhood programs.

~~((The legislature further finds that existing federal head start programs and state supported early childhood education programs provide services for less than one-third of the eligible children in Washington.))~~

The legislature intends to encourage development of community partnerships for children at risk by authorizing a program of voluntary grants and contributions from business and community organizations to increase opportunities for children to participate in early childhood education.

Sec. 4. RCW 28A.215.120 and 1988 c 174 s 3 are each amended to read as follows:

The department of community, trade, and economic development shall administer a state-supported ~~((preschool))~~ early childhood education and assistance program to assist eligible children with educational, social, health, nutritional, and cultural development to enhance their opportunity for success in the common school system. Eligible children shall be admitted to approved ~~((preschool))~~ early childhood programs to the extent that the legislature provides funds, and additional eligible children may be admitted to the extent that grants

and contributions from community sources provide sufficient funds for a program equivalent to that supported by state funds.

Sec. 5. RCW 28A.215.130 and 1988 c 174 s 4 are each amended to read as follows:

Approved ~~((preschool))~~ early childhood programs shall receive state-funded support through the department. ~~((School districts, and existing head start grantees in cooperation with school districts))~~ Public or private nonsectarian organizations, including, but not limited to school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations, are eligible to participate as providers of the state ~~((preschool))~~ early childhood program. ~~((School districts may contract with other governmental or nongovernmental nonsectarian organizations to conduct a portion of the state program.))~~ Funds appropriated for the state program shall be used to continue to operate existing programs or to establish new or expanded ~~((pre-school))~~ early childhood programs, and shall not be used to supplant federally supported head start programs. Funds obtained by providers through voluntary grants or contributions from individuals, agencies, corporations, or organizations may be used to expand or enhance preschool programs so long as program standards established by the department are maintained, but shall not be used to supplant federally supported head start programs or state-supported ~~((preschool))~~ early childhood programs. Persons applying to conduct the ~~((preschool))~~ early childhood program shall identify targeted groups and the number of children to be served, program components, the qualifications of instructional and special staff, the source and amount of grants or contributions from sources other than state funds, facilities and equipment support, and transportation and personal care arrangements.

Sec. 6. RCW 28A.215.150 and 1988 c 174 s 6 are each amended to read as follows:

The department shall adopt rules under chapter 34.05 RCW for the administration of the ~~((preschool))~~ early childhood program. ~~((Federal head start program criteria, including set aside provisions for the))~~ Approved early childhood programs shall conduct needs assessments of their service area, identify any targeted groups of children, to include but not be limited to children of seasonal and migrant farmworkers and native American populations living either on or off reservation, ((to the extent practicable, shall be considered as guidelines for the state preschool early childhood assistance program)) and provide to the department a service delivery plan, to the extent practicable, that addresses these targeted populations.

The department in developing rules for the ~~((preschool))~~ early childhood program shall consult with the advisory committee, and shall consider such factors as coordination with existing head start and other ~~((preschool))~~ early childhood programs, the preparation necessary for instructors, qualifications of instructors, adequate space and equipment, and special transportation needs. The

rules shall specifically require the ~~((preschool))~~ early childhood programs to provide for parental involvement ~~((at a level not less than that provided under the federal head start program criteria))~~ in participation with their child's program, in local program policy decisions, in development and revision of service delivery systems, and in parent education and training.

Sec. 7. 1987 c 518 s 1 (uncodified) is amended to read as follows:

The long-term social, community welfare, and economic interests of the state will be served by an investment in our children. Conclusive studies and experiences show that providing children with ~~((certain))~~ developmental experiences and providing parents with effective parental ~~((guidance))~~ partnership, empowerment, opportunities for involvement with their child's developmental learning, and expanding parenting skills, learning, and training can greatly improve ~~((their))~~ children's performance in school as well as increase the likelihood of ~~((their))~~ children's success as adults. National studies have also confirmed that special attention to, and educational assistance for, children ~~((and)),~~ their school environment ~~((+)),~~ and their families are the most effective ways in which to meet the state's social and economic goals.

The legislature intends to enhance the readiness to learn of certain children and students by: Providing for an expansion of the state early childhood education and assistance program for children from low-income families and establishing an adult literacy program for certain parents; assisting school districts to establish elementary counseling programs; instituting a program to address learning problems due to drug and alcohol use and abuse; and establishing a program directed at students who leave school before graduation.

The legislature intends further to establish programs that will allow for parental, business, and community involvement in assisting the school systems throughout the state to enhance the ability of children to learn.

Sec. 8. RCW 28A.215.160 and 1988 c 174 s 7 are each amended to read as follows:

The department shall review applications from public or private nonsectarian organizations for state funding of early childhood education and assistance programs and award funds ~~((on a competitive basis))~~ as determined by department rules and based on local community needs and demonstrated capacity to provide services.

Sec. 9. RCW 28A.215.170 and 1988 c 174 s 8 are each amended to read as follows:

The governor shall report to the legislature before each regular session of the legislature convening in an odd-numbered year, on the ~~((merits of continuing and expanding the preschool program or instituting other means of providing early childhood development assistance. The))~~ current status of the program, the state-wide need for early childhood program services, and the plans to address these needs. The department shall consult with the office of the superintendent of public instruction ~~((shall assist the governor))~~ in the preparation of the biennial

report and ~~((shall be consulted))~~ on all issues of mutual concern addressed in ~~((said))~~ the report.

~~((If the governor recommends the continuation of a state-funded preschool program, then))~~ The governor's report shall include specific recommendations on at least the following issues:

(1) The desired relationships of a state-funded ~~((preschool))~~ early childhood education and assistance program with the common school system;

(2) The types of children and their needs that the program should serve;

(3) The appropriate level of state support for implementing a comprehensive ~~((preschool))~~ early childhood education and assistance program for all eligible children, including related programs to prepare instructors and provide facilities, equipment, and transportation;

(4) The state administrative structure necessary to implement the program; and

(5) The establishment of a system to examine and monitor the effectiveness of ~~((preschool))~~ early childhood educational and assistance services for ~~((disadvantaged))~~ eligible children to measure, among other elements, if possible, how the average level of performance of children completing this program compare to the average level of performance of all state students in their grade level, and to the average level of performance of those ~~((at-risk))~~ eligible students who ~~((do))~~ did not have access to this program. The evaluation system shall examine how the percentage of these children needing access to special education or remedial programs compares to the overall percentage of children needing such services and compares to the percentage of ~~((at-risk))~~ eligible students who ~~((do))~~ did not have access to this program needing such services.

Sec. 10. RCW 28A.215.180 and 1990 c 33 s 214 are each amended to read as follows:

For the purposes of RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908, the department may award state support under RCW 28A.215.100 through 28A.215.160 to increase the number of eligible children assisted by the federal or state-supported ~~((preschool))~~ early childhood programs in this state ~~((by up to five thousand additional children))~~. Priority shall be given to ~~((groups in))~~ those geographical areas which include a high percentage of families qualifying under the ~~((federal "at-risk"))~~ "eligible child" criteria. The overall program funding level shall be based on an average grant per child consistent with state appropriations made for program costs: PROVIDED, That programs addressing special needs of selected groups or communities shall be recognized in the department's rules.

Sec. 11. RCW 28A.215.200 and 1990 c 33 s 215 are each amended to read as follows:

The department may solicit gifts, grants, conveyances, bequests and devises for the use or benefit of the ~~((preschool))~~ early childhood state education and assistance program established by RCW 28A.215.100 through 28A.215.200 and

28A.215.900 through 28A.215.908. The department shall actively solicit support from business and industry and from the federal government for the ~~((pre-school))~~ state early childhood education and assistance program and shall assist local programs in developing partnerships with the community for ~~((children-at-risk))~~ eligible children.

NEW SECTION. **Sec. 12.** This act shall take effect July 1, 1994.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 167

[House Bill 2480]

CLEANING FISH—BUSINESS AND OCCUPATION TAX EXEMPTION

AN ACT Relating to the taxation of manufacturers of fish products; adding a new section to chapter 82.04 RCW; adding a new section to chapter 75.20 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 82.04 RCW to read as follows:

The tax imposed by RCW 82.04.240 does not apply to cleaning fish. "Cleaning fish" means the removal of the head, fins, or viscera from fresh fish without further processing, other than freezing.

****NEW SECTION.** Sec. 2. A new section is added to chapter 75.20 RCW to read as follows:*

Local governments shall not charge permit fees for fish enhancement projects that are proposed by state agencies, cooperative groups, and regional fisheries enhancement groups.

**Sec. 2 was vetoed, see message at end of chapter.*

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

Passed the House March 10, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor March 30, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 30, 1994.

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

"I am returning herewith, without my approval as to section 2, House Bill No. 2480 entitled:

"AN ACT Relating to taxation of manufacturers of fish products;"

This bill relates to providing an exemption for fish processors from the manufacturing tax when fish are processed in Washington. Section 2 of the bill prohibits local governments from charging permit fees for fish enhancement projects that are proposed by state agencies, cooperative groups, and regional fisheries enhancement groups.

Section 2 places an undue burden on the state's local governments. If this section were to become law up to 300 projects a year that currently require local government permits would be impacted. While these fish enhancement projects are very worthwhile, many of them are very complex and controversial, and local governments should not be denied the ability to levy permit fees for the work the projects require.

For this reason I am vetoing section 2 of this bill.

The Association of Washington Cities and the Washington Association of Counties have indicated a desire to work with the Executive branch and members of the legislature who are interested in promoting fish enhancement projects and see if a reasonable accommodation can be found.

With the exception of Section 2, House Bill No. 2480 is approved."

CHAPTER 168

[House Bill 2494]

MOVING COMPANIES—ADVERTISING REGULATED

AN ACT Relating to moving companies; adding a new section to chapter 81.80 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 81.80 RCW to read as follows:

(1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number in the advertisement.

(2) As of the effective date of this act, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents which show a household goods motor carrier name or address shall show the carrier's Washington utilities and transportation commission permit number. The alphabetized listing of household good motor carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Advertising by electronic transmission need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods motor carrier.

(5) If, upon investigation, the commission determines that a motor carrier or person acting in the capacity of a motor carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation.

Passed the House February 9, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 169

[House Bill 2512]

SEXUALLY AGGRESSIVE YOUTH—DEFINITION—YOUTH IN CARE AND CUSTODY OF A TRIBE

AN ACT Relating to sexually aggressive youth; and reenacting and amending RCW 74.13.075.

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

Sec. 1. RCW 74.13.075 and 1993 c 402 s 3 and 1993 c 146 s 1 are each reenacted and amended to read as follows:

(1) For the purposes of funds appropriated for the treatment of sexually aggressive youth, the term "sexually aggressive youth" means those ~~((who are the subject of a proceeding under chapter 13.34 RCW or))~~ juveniles who:

(a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and

(i) Are in the care and custody of the state ~~((and:~~

~~(i) Have been abused; and~~

~~(ii) Have committed a sexually aggressive or other violent act that is sexual in nature))~~ or a federally recognized Indian tribe located within the state; or

(ii) Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a tribal court located within the state; or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for

which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

- (a) The age of the juvenile;
- (b) The extent and type of abuse to which the juvenile has been subjected;
- (c) The juvenile's past conduct;
- (d) The benefits that can be expected from the treatment;
- (e) The cost of the treatment; and
- (f) The ability of the juvenile's parent or guardian to pay for the treatment.

(3) The department may provide funds, under this section, for youth in the care and custody of a tribe or through a tribal court, for the treatment of sexually aggressive youth only if: (a) The tribe uses the same or equivalent definitions and standards for determining which youth are sexually aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 170

[Substitute House Bill 2529]

ADOPTIONS—BACKGROUND INFORMATION AVAILABILITY

AN ACT Relating to adoption; amending RCW 26.33.350 and 26.33.380; and adding a new section to chapter 26.33 RCW.

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

Sec. 1. RCW 26.33.350 and 1991 c 136 s 4 are each amended to read as follows:

(1) Every person, firm, society, association, ~~((or))~~ corporation, or state agency 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 known and available information concerning the mental, physical, and sensory handicaps of the child.

(2) The report shall not reveal the identity of the ~~((natural))~~ birth parent of the child except as authorized under this chapter but shall include any known or available mental or physical health history of the ~~((natural))~~ birth parent that needs to be known by the adoptive parent to facilitate proper health care for the child or that will assist the adoptive parent in maximizing the developmental potential of the child.

~~((2))~~ (3) Where known or available, the information provided shall include:

(a) A review of the birth family's and the child's previous medical history, ~~((if available,))~~ including the child's x-rays, examinations, hospitalizations, and

immunizations. After July 1, 1992, medical histories shall be given on a standardized reporting form developed by the department;

(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.

(4) Entities and persons obligated to provide information under this section shall make reasonable efforts to locate records and information concerning the child's mental, physical, and sensory handicaps. The entities or persons providing the information have no duty, beyond providing the information, to explain or interpret the records or information regarding the child's present or future health.

Sec. 2. RCW 26.33.380 and 1993 c 81 s 4 are each amended to read as follows:

(1) Every person, firm, society, association, ((~~or~~)) corporation, or state agency 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 birth parents of the child but shall contain reasonably available nonidentifying information.

(2) Entities and persons obligated to provide information under this section shall make reasonable efforts to locate records and information concerning the child's family background and social history. The entities or persons providing the information have no duty, beyond providing the information, to explain or interpret the records or information regarding the child's mental or physical health.

NEW SECTION. Sec. 3. A new section is added to chapter 26.33 RCW to read as follows:

The department shall adopt rules, in consultation with affected parties, establishing minimum standards for making reasonable efforts to locate records and information relating to adoptions as required under RCW 26.33.350 and 26.33.380.

Passed the House March 7, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 171

[Substitute House Bill 2571]

INSURERS—CAPITAL AND SURPLUS REQUIREMENTS

AN ACT Relating to capital and surplus requirements of insurers; and amending RCW 48.05.340.

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

Sec. 1. RCW 48.05.340 and 1993 c 462 s 50 are each amended to read as follows:

(1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess ~~((and thereafter maintain))~~ unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and ~~((shall possess when first so authorized))~~ additional funds in surplus, as follows, and shall thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) such additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to

operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) ~~((An))~~ Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to ((July 1, 1994)) the effective date of this act, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority. A domestic insurer holding a certificate of authority to transact insurance in this state immediately prior to the effective date of this act may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to ((such effective date, and any proposed domestic insurer which is in process of formation or financing under a solicitation permit which is outstanding immediately prior to July 1, 1991, shall, if otherwise qualified therefor, be authorized to transact any kind or kinds of insurance upon the basis of the capital and surplus requirements of such an insurer under the laws in force immediately prior to such effective date. The requirements for paid-in capital stock, basic surplus, and special surplus that were in effect immediately before July 1, 1991, apply to any completed application for a certificate of authority from a foreign or alien insurer that is on file with the commissioner on July 1, 1991)) the effective date of this act.

(4) The commissioner may, by rule, require insurers to maintain additional capital and surplus based upon the type, volume, and nature of insurance business transacted consistent with the methods then adopted by the National Association of Insurance Commissioners for determining the appropriate amount of additional capital and surplus to be required. In the absence of an applicable rule, the commissioner may, after a hearing or with the consent of the insurer, require an insurer to have and maintain a larger amount of capital or surplus than prescribed under this section or the rules under this section, based upon the volume and kinds of insurance transacted by the insurer and on the principles of risk-based capital as determined by the National Association of Insurance Commissioners. This subsection applies only to insurers authorized to write life insurance, disability insurance, or both.

Passed the House February 14, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 172

[House Bill 2592]

OVERSIZE VEHICLES—DUPLICATE PERMIT FEE—MOVEMENT OF
MOBILE OR MANUFACTURED HOMES

AN ACT Relating to oversize and overweight vehicles and loads; and amending RCW 46.44.047 and 46.44.0941.

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

Sec. 1. RCW 46.44.047 and 1979 ex.s. c 136 s 74 are each amended to read as follows:

A three axle truck tractor and a two axle pole trailer combination engaged in the operation of hauling logs may exceed by not more than six thousand eight hundred pounds the legal gross weight of the combination of vehicles when licensed, as permitted by law, for sixty-eight thousand pounds: PROVIDED, That the distance between the first and last axle of the vehicles in combination shall have a total wheelbase of not less than thirty-seven feet, and the weight upon two axles spaced less than seven feet apart shall not exceed thirty-three thousand six hundred pounds.

Such additional allowances shall be permitted by a special permit to be issued by the department of transportation valid only on state primary or secondary highways authorized by the department and under such rules, regulations, terms, and conditions prescribed by the department. The fee for such special permit shall be fifty dollars for a twelve-month period beginning and ending on April 1st of each calendar year. Permits may be issued at any time, but if issued after July 1st of any year the fee shall be thirty-seven dollars and fifty cents. If issued on or after October 1st the fee shall be twenty-five dollars, and if issued on or after January 1st the fee shall be twelve dollars and fifty cents. A copy of such special permit covering the vehicle involved shall be carried in the cab of the vehicle at all times. Upon the third offense within the duration of the permit for violation of the terms and conditions of the special permit, the special permit shall be canceled. The vehicle covered by such canceled special permit shall not be eligible for a new special permit until thirty days after the cancellation of the special permit issued to said vehicle. The fee for such renewal shall be at the same rate as set forth in this section which covers the original issuance of such special permit. Each special permit shall be assigned to a three-axle truck tractor in combination with a two-axle pole trailer. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit, a fee of ~~((five))~~ fourteen dollars shall be charged for each such duplicate issued or each such transfer.

All fees collected hereinabove shall be deposited with the state treasurer and credited to the motor vehicle fund.

Permits involving city streets or county roads or using city streets or county roads to reach or leave state highways, authorized for permit by the department may be issued by the city or county or counties involved. A fee of five dollars for such city or county permit may be assessed by the city or by the county

legislative authority which shall be deposited in the city or county road fund. The special permit provided for herein shall be known as a "log tolerance permit" and shall designate the route or routes to be used, which shall first be approved by the city or county engineer involved. Authorization of additional route or routes may be made at the discretion of the city or county by amending the original permit or by issuing a new permit. Said permits shall be issued on a yearly basis expiring on March 31st of each calendar year. Any person, firm, or corporation who uses any city street or county road for the purpose of transporting logs with weights authorized by state highway log tolerance permits, to reach or leave a state highway route, without first obtaining a city or county permit when required by the city or the county legislative authority shall be subject to the penalties prescribed by RCW 46.44.105. For the purpose of determining gross weight the actual scale weight taken by the officer shall be prima facie evidence of such total gross weight. In the event the gross weight is in excess of the weight permitted by law, the officer may, within his discretion, permit the operator to proceed with his vehicles in combination.

The chief of the state patrol, with the advice of the department, may make reasonable rules and regulations to aid in the enforcement of the provisions of this section.

Sec. 2. RCW 46.44.0941 and 1993 c 102 s 4 are each amended to read as follows:

The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

All overlegal loads, except overweight, single trip	\$ 10.00
Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days	\$ 20.00
Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days	\$ 10.00
Continuous operation of a combination of vehicles having one trailing unit that exceeds forty-eight feet and is not more than fifty-six feet in length, for a period of one year	\$ 100.00
Continuous operation of a combination of vehicles having two trailing units which together exceed <u>sixty-one</u> feet and	

are not more than sixty-eight feet in length, for a period of one year	\$ 100.00
Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days	\$ 70.00
Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days	\$ 90.00
Continuous (operation of overlegal loads) <u>movement of a mobile home or manufactured home</u> having nonreducible features not to exceed eighty-five feet in <u>total</u> length and fourteen feet in width, for a period of one year	\$ 150.00
Continuous operation of a two or three-axle collection truck, actually engaged in the collection of solid waste or recyclables, or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system	\$ 42.00 per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year \$ 25.00
- (3) Persons engaged in the business of the

sale, repair, or maintenance of such farm implements, for any three-month period	\$ 25.00
(4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year	\$ 100.00

Overweight Fee Schedule

Weight over total registered gross weight.

	Fee per mile on state highways
1-5,999 pounds	\$.07
6,000-11,999 pounds	\$.14
12,000-17,999 pounds	\$.21
18,000-23,999 pounds	\$.35
24,000-29,999 pounds	\$.49
30,000-35,999 pounds	\$.63
36,000-41,999 pounds	\$.84
42,000-47,999 pounds	\$ 1.05
48,000-53,999 pounds	\$ 1.26
54,000-59,999 pounds	\$ 1.47
60,000-65,999 pounds	\$ 1.68
66,000-71,999 pounds	\$ 2.03
72,000-79,999 pounds	\$ 2.38
80,000 pounds or more	\$ 2.80

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government.

Passed the House February 14, 1994.
 Passed the Senate March 4, 1994.
 Approved by the Governor March 30, 1994.
 Filed in Office of Secretary of State March 30, 1994.

CHAPTER 173

[House Bill 2593]

HIGHWAY IMPROVEMENTS FOR PLANNED ECONOMIC DEVELOPMENTS—BONDS

AN ACT Relating to funding for highway improvements necessitated by planned economic development; reenacting and amending RCW 47.10.801; and declaring an emergency.

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

Sec. 1. RCW 47.10.801 and 1985 c 433 s 7 and 1985 c 406 s 2 are each reenacted and amended to read as follows:

(1) In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other state highway improvements, there shall be issued and sold, subject to subsections (2) ~~((and)),~~ (3), and (4) of this section, upon the request of the Washington state transportation commission a total of four hundred sixty million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(a) Not to exceed two hundred twenty-five million dollars to pay the state's share of costs for federal-aid interstate highway improvements and until December 31, 1989, to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 82, 90, 182, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.790 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall consult with the legislative transportation committee prior to the adoption of plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122;

(b) Two hundred twenty-five million dollars for major transportation improvements throughout the state that are identified as category C improvements and for selected major non-interstate construction and reconstruction projects that are included as Category A Improvements in RCW 47.05.030;

(c) Ten million dollars for state highway improvements necessitated by planned economic development, as determined through the procedures set forth in RCW 43.160.074 and 47.01.280.

(2) The amount of bonds authorized in subsection (1)(a) of this section shall be reduced if the transportation commission, in consultation with the legislative transportation committee, determines that any of the bonds that have not been sold are no longer required.

(3) The amount of bonds authorized in subsection (1)(b) of this section shall be increased by an amount not to exceed, and concurrent with, any reduction of bonds authorized under subsection (1)(a) of this section in the manner prescribed in subsection (2) of this section.

(4) The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section and increase the amount of bonds authorized in subsection (1) (a) or (b) of this section, or both by an amount equal to the decrease in subsection (1)(c) of this section. The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section only if the legislature appropriates a transfer of an equal amount of funds from the motor vehicle fund - basic account to the economic development account under RCW 47.10.803.

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

Passed the House February 9, 1994.

Passed the Senate March 7, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 174

[Engrossed Substitute House Bill 2626]

PLUMBERS' CERTIFICATE OF COMPETENCY—CITY ENFORCEMENT PILOT PROJECT

AN ACT Relating to enforcement of plumbing certificate of competency requirements; amending RCW 18.106.020, 18.106.180, 18.106.190, 18.106.200, 18.106.220, 18.106.250, and 18.106.270; adding a new section to chapter 18.106 RCW; repealing RCW 18.106.025 and 18.106.260; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.106 RCW to read as follows:

The department of labor and industries shall establish one pilot project in which the department will enter into an agreement with a city regarding compliance inspections by the city to enforce this chapter. Under the terms of the agreement, the city shall be permitted to submit declarations of noncompliance to the department for the department's enforcement under RCW 18.106.180, with reimbursement to the city at an established fee. The pilot project shall be located in eastern Washington.

Sec. 2. RCW 18.106.020 and 1983 c 124 s 4 are each amended to read as follows:

(1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, or temporary permit, or without being supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, or temporary permit or is supervised by a person who has a journeyman certificate, specialty

certificate, or temporary permit. For the purposes of this section, "contractor" means any person or body of persons, corporate or otherwise, engaged in any work covered by the provisions of this chapter, chapter 18.27 RCW, or chapter 19.28 RCW, by way of trade or business. However, in no case shall this section apply to a contractor who is contracting for work on his or her own residence.

(2) Violation of subsection (1) of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of subsection (1) of this section or employs a person in violation of subsection (1) of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of subsection (1) of this section or at which a person is employed in violation of subsection (1) of this section is a separate infraction.

(3) Notices of infractions for violations of subsection (1) of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of subsection (1) of this section;

(b) The contractor in violation of subsection (1) of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of subsection (1) of this section.

Sec. 3. RCW 18.106.180 and 1983 c 124 s 7 are each amended to read as follows:

An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(3) if a person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department.

Sec. 4. RCW 18.106.190 and 1983 c 124 s 9 are each amended to read as follows:

~~((+)) The form of the notice of infraction issued under this chapter shall ((be) prescribed by the supreme court following consultation with the department. To the extent practicable, the notice of infraction issued under this chapter shall conform to the notice of traffic infraction prescribed by the supreme court pursuant to RCW 46.63.060.~~

~~(2) The notice of infraction shall~~) include the following:

~~((a)) (1) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;~~

~~((b)) (2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;~~

~~((e)) (3) A statement of the specific infraction for which the notice was issued;~~

~~((d))~~ (4) A statement ~~((that a one-hundred-dollar))~~ of the monetary penalty that has been established for the infraction;

~~((e))~~ (5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

~~((f))~~ (6) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

~~((g))~~ (7) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

~~((h))~~ (8) A statement that refusal to sign the infraction as directed in subsection ~~((2)(g))~~ (7) of this section is a misdemeanor; and

~~((i))~~ (9) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 5. RCW 18.106.200 and 1983 c 124 s 8 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by ~~((a district court. A notice of infraction shall be filed in the district court district in which the infraction is alleged to have occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party))~~ an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department within fourteen days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction is alleged to have occurred.

Sec. 6. RCW 18.106.220 and 1983 c 124 s 11 are each amended to read as follows:

(1) A person who receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served.

(2) If the person named in the notice of infraction does not wish to contest the ~~((determination))~~ notice of infraction, the person shall ~~((respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response))~~ pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the determination is received~~((, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department))~~ by the department with the appropriate payment, the department shall make the appropriate entry in its records.

(3) If the person named in the notice of infraction wishes to contest the ~~((determination))~~ notice of infraction, the person shall respond by ~~((completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than fourteen days from the date of the notice, except by agreement of the parties))~~ filing an answer of protest with the department specifying the grounds of protest.

(4) If any person issued a notice of infraction:

(a) Fails to respond to the notice of infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) of this section;

the ~~((court))~~ administrative law judge shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure to respond to the notice of infraction or to appear at a requested hearing.

~~((5) An order entered by the court under subsection (4)(b) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions in courts of limited jurisdiction.))~~

Sec. 7. RCW 18.106.250 and 1983 c 124 s 13 are each amended to read as follows:

(1) ~~((A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.))~~

(2) ~~The court may consider the notice of infraction and any other written report made under oath submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.~~

~~(3))~~ The administrative law judge shall conduct notice of infraction cases under this chapter pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued~~((:))~~:

(a) The defendant ~~((was registered))~~ who was issued a notice of infraction authorized by RCW 18.106.020(3)(a) had a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who has such a certificate or permit, or was exempt from ~~((registration.~~

~~(4))~~ this chapter under RCW 18.106.150; or

(b) For the defendant who was issued a notice of infraction authorized by RCW 18.106.020(3)(b) or (c), the person employed or supervised by the

defendant has a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who had such a certificate or permit, or was exempt from this chapter under RCW 18.106.150.

~~(3)~~ After consideration of the evidence and argument, the ~~((court))~~ administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the ~~((court's))~~ record((s)) of the proceedings. If it has been established that the infraction was committed, ~~((an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department))~~ the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

~~((5))~~ (4) An appeal from the ~~((court's))~~ administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

Sec. 8. RCW 18.106.270 and 1983 c 124 s 16 are each amended to read as follows:

(1) A person found to have committed an infraction under RCW 18.106.020 shall be assessed a monetary penalty of ~~((one))~~ two hundred fifty dollars for the first infraction, and not more than one thousand dollars for a second or subsequent infraction. The department shall set by rule a schedule of penalties for infractions imposed under this chapter.

(2) The ~~((court))~~ administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction for good cause shown.

(3) Monetary penalties collected under this chapter shall be ~~((remitted as provided in chapter 3.62 RCW))~~ deposited in the plumbing certificate fund.

NEW SECTION. **Sec. 9.** The following acts or parts of acts are each repealed:

- (1) RCW 18.106.025 and 1983 c 124 s 5; and
- (2) RCW 18.106.260 and 1983 c 124 s 15.

NEW SECTION. **Sec. 10.** This act shall take effect July 1, 1994.

Passed the House March 8, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 175

[Engrossed Substitute House Bill 2628]

CONDEMNATION OF BLIGHTED PROPERTY

AN ACT Relating to condemnation of blighted property; and amending RCW 35.80A.010.

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

Sec. 1. RCW 35.80A.010 and 1989 c 271 s 239 are each amended to read as follows:

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 meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more((:)); (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the ((county health department in the applicable county and that)) executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure 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.

Passed the House February 10, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 176

[Substitute House Bill 2629]

JUNK VEHICLES—REMOVAL—NOTICE OF INFRACTION
FOR FAILURE TO REDEEM

AN ACT Relating to junk vehicles; and amending RCW 46.55.010, 46.55.240, and 46.63.030.

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

Sec. 1. RCW 46.55.010 and 1991 c 292 s 1 are each amended to read as follows:

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

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for 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 vehicle certified under RCW 46.55.230 as meeting ~~((a))~~ at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) ~~((Is without a valid, current registration plate;~~

~~(e)))~~ Has an approximate fair market value equal only to the approximate value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(7) "Residential property" means property that has no more than four living units located on it.

(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.

(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.

(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.

(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.

(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 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted 24 hours

Sec. 2. RCW 46.55.240 and 1991 c 292 s 3 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.

(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 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. A city, town, or county may also provide for the payment to the tow truck operator or wrecker as a part of a neighborhood revitalization program.

(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.

Sec. 3. RCW 46.63.030 and 1987 c 66 s 2 are each amended to read as follows:

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

- (a) When the infraction is committed in the officer's presence;
- (b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or
- (c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120 an officer shall send a notice of infraction by certified mail to the last known address of the registered owner of the vehicle.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 177

[Engrossed Substitute House Bill 2644]

RETIREMENT CONTRIBUTIONS AND RECOVERY OF OVERPAYMENTS

AN ACT Relating to retirement contributions and recovery of overpayments; amending RCW 41.50.130, 41.32.500, 41.32.510, 41.40.280, and 41.40.010; amending 1990 c 274 s 18 (uncodified); adding new sections to chapter 41.50 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Whenever employer or member contributions are not made at the time service is rendered, the state retirement system trust funds lose investment income which is a major source of pension funding. The department of retirement systems has broad authority to charge interest to compensate for the loss to the trust funds, subject only to explicit statutory provisions to the contrary.

(2) The inherent authority of the department to recover all overpayments and unauthorized payments from the retirement trust funds, for the benefit of members and taxpayers, should be established clearly in statute.

NEW SECTION. Sec. 2. A new section is added to chapter 41.50 RCW to read as follows:

The department may charge interest, as determined by the director, on member or employer contributions owing to any of the retirement systems listed in RCW 41.50.030. The department's authority to charge interest shall extend to all optional and mandatory billings for contributions where member or employer contributions are paid other than immediately after service is rendered. Except as explicitly limited by statute, the director may delay the imposition of interest charges on late contributions under this section if the delay is necessary to implement required changes in the department's accounting and information systems.

Sec. 3. RCW 41.50.130 and 1987 c 490 s 1 are each amended to read as follows:

(1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member ~~((or)),~~ beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member ~~((or)),~~ beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a member or beneficiary, the retirement system shall adjust the payment in such a manner that the benefit to which such member or beneficiary was correctly entitled shall be reduced by an amount equal to the actuarial equivalent of the amount of overpayment. Alternatively the member shall have the option of repaying the overpayment in a lump sum within ninety days of notification and receive the proper benefit in the future. In the case of overpayments to a member ~~((or)),~~ beneficiary, or other person or entity resulting from actual fraud on the part of the member ~~((or)),~~ beneficiary, or other person or entity, the benefits shall be adjusted to reflect the full amount of such overpayment, plus interest at the ~~((maximum rate allowed under RCW 19.52.020(1) as it was in effect the first month the overpayment occurred))~~ rate of one percent per month on the outstanding balance.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount

of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3)(a) The employer shall elicit on a written form from all new employees as to their having been retired from a retirement system listed in RCW 41.50.030.

(b) In the case of overpayments which result from the failure of an employer to report properly to the department the employment of a retiree from information received in subparagraph (a), the employer shall, upon receipt of a billing from the department, pay into the appropriate retirement system the amount of the overpayment plus interest as determined by the director. However, except in the case of actual employer fraud, the overpayments charged to the employer under this subsection shall not exceed five thousand dollars for each year of overpayments received by a retiree. The retiree's benefits upon reretirement shall not be reduced because of such overpayment except as necessary to recapture contributions required for periods of employment.

(c) The provision of this subsection regarding the reduction of retirees' benefits shall apply to recovery actions commenced on or after January 1, 1986, even though the overpayments resulting from retiree employment were discovered by the department prior to that date. The provisions of this subsection regarding the billing of employers for overpayments shall apply to overpayments made after January 1, 1986.

(4) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a member, beneficiary, or other person or entity in receipt of an overpayment.

(5) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation.

NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW to read as follows:

(1) If a person receives a withdrawal of accumulated contributions from any of the retirement systems listed in RCW 41.50.030 in contravention of the restrictions on withdrawal for the particular system, the member shall no longer be entitled to credit for the period of service represented by the withdrawn contributions. The erroneous withdrawal shall be treated as an authorized withdrawal, subject to all conditions imposed by the member's system for restoration of withdrawn contributions. Failure to restore the contributions within the time permitted by the system shall constitute a waiver by the member of any

right to receive a retirement allowance based upon the period of service represented by the withdrawn contributions.

(2) All erroneous withdrawals occurring prior to the effective date of this section shall be subject to the provisions of this section. The deadline for restoring the prior erroneous withdrawals shall be five years from the effective date of this section for members who are currently active members of a system.

Sec. 5. RCW 41.32.500 and 1991 c 35 s 57 are each amended to read as follows:

(1) Membership in the retirement system is terminated when a member retires for service or disability, dies, or withdraws ~~((the)) his or her accumulated contributions~~ ~~((or does not establish service credit with the retirement system for five consecutive years; however, a member may retain membership in the teachers' retirement system by leaving the accumulated contributions in the teachers' retirement fund under one of the following conditions:~~

~~(a) If he or she is eligible for retirement;~~

~~(b) If he or she is a member of another public retirement system in the state of Washington by reason of change in employment and has arranged to have membership extended during the period of such employment;~~

~~(c) If he or she is not eligible for retirement but has established five or more years of Washington membership service credit.))~~

The prior service certificate becomes void when a member dies~~((;))~~ or withdraws the accumulated contributions ~~((or does not establish service credit with the retirement system for five consecutive years)), and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved.~~

~~(2) ((Any member, except an elected official, who reentered service and who failed to restore withdrawn contributions, shall now have from April 4, 1986, through June 30, 1987, to restore the contributions, with interest as determined by the director.~~

~~(3))~~ Within the ninety days following the employee's resumption of employment, the employer shall notify the department of the resumption and the department shall then return to the employer a statement of the potential service credit to be restored, the amount of funds required for restoration, and the date when the restoration must be accomplished. The employee shall be given a copy of the statement and shall sign a copy of the statement which signed copy shall be placed in the employee's personnel file.

Sec. 6. RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each amended to read as follows:

Should a member cease to be employed by an employer and request upon a form provided by the department a refund of the member's accumulated contributions with interest, this amount shall be paid to the individual less any withdrawal fee which may be assessed by the director which shall be deposited in the department of retirement systems expense fund. The amount withdrawn,

together with interest as determined by the director must be paid if the member desires to reestablish the former service credits. (~~Termination of employment with one employer for the specific purpose of accepting employment with another employer or termination with one employer and reemployment with the same employer, whether for the same school year or for the ensuing school year, shall not qualify a member for a refund of the member's accumulated contributions. A member who files an application for a refund of the member's accumulated contributions and subsequently enters into a contract for or resumes public school employment before a refund payment has been made shall not be eligible for such payment.~~) A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment.

Sec. 7. RCW 41.40.280 and 1991 c 35 s 86 are each amended to read as follows:

The department may, in its discretion, withhold payment of all or part of a member's contributions for not more than six months after a member has ceased to be an employee. (~~Termination of employment with one employer for the purpose of accepting employment with another employer or termination with one employer and reemployment with the same employer within a period of thirty days shall not qualify a member for a refund of his or her accumulated contributions. In addition, a member who files an application for a refund of his or her accumulated contributions and subsequently becomes employed in an eligible position before the expiration of thirty days or before a refund payment has been made, shall not be eligible for the refund payment.~~) A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment.

Sec. 8. RCW 41.40.010 and 1993 c 95 s 8 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) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan I members, 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 plan II members, 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 41.40.023.

(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 plan I members, 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~~). Compensation that a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2). 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 plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude 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)~~. Compensation that a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2). 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:

((#)) (A) The compensation earnable the member would have received had such member not served in the legislature; or

((#)) (B) 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 plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

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 service credit months of service during any calendar year: PROVIDED FURTHER, That where an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

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 service credit months of service for such calendar year: PROVIDED, That when an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "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 41.40.023: 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.

(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "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.

(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.023.

(23) "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.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "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.

(28) "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.

(29) "Retiree" 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.

(30) "Director" means the director of the department.

(31) "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.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

NEW SECTION. Sec. 9. (1) Notwithstanding RCW 41.50.130, the department is not required to correct, nor to cause any employer to correct the reporting error described in subsection (2) of this section.

(2) Standby pay and other similar forms of compensation that are not pay for time worked were not salary or wages for personal services within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8), some employers have been reporting standby pay to the department as compensation earnable. To avoid unduly impacting the retirement allowances of persons who have retired on or before the effective date of this act, the department is not required to correct, nor cause to be corrected, any misreporting of amounts identified as standby pay through the effective date of this act. Any erroneous reporting of amounts identified as standby pay to the department on or after the effective date of this act shall be corrected as an error under RCW 41.50.130.

(3) The forgiveness of past misreporting under subsection (2) of this section constitutes a benefit enhancement for those individuals for whom amounts received as standby pay were misreported to the department. Prior to the effective date of this act no retirement system member had any right, contractual or otherwise, to have amounts identified as standby pay included as compensation earnable.

Sec. 10. 1990 c 274 s 18 (uncodified) is amended to read as follows:

(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b).

Passed the House March 7, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 178

[Substitute House Bill 2646]

BEES—FEES

AN ACT Relating to apiaries; and amending RCW 15.60.005, 15.60.007, 15.60.010, 15.60.040, 15.60.043, and 15.60.050.

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

Sec. 1. RCW 15.60.005 and 1993 c 89 s 1 are each amended to read as follows:

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" means a site where hives of bees or hives are kept or found.

(4) "Abandoned hive" means any hive, with or without bees, that evidences a lack of being properly managed in that it has not been supered in the spring, except nucs, or unsupered in the fall, or is otherwise unmanaged and left without authorization and unattended on the property of another person or on public land.

(5) "Apiarist" means any person who owns bees or is a keeper of bees in Washington.

(6) "Beekeeping equipment" means any implements or devices used in the manipulation of bees, their brood, or hives in an apiary.

(7) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(8) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter and accompanying the movement of inspected bees, bee hives, or beekeeping equipment.

(9) "Colony" refers to a natural group of bees having a queen or queens.

(10) "Compliance agreement" means a written agreement between the department and a person engaged in apiculture, or handling, selling, or moving of hives or beekeeping equipment in which the person agrees to comply with stipulated requirements.

(11) "Feral colony" means a colony of bees in a natural cavity or a manufactured structure not intended for the keeping of bees on movable frames and comb.

(12) "Swarm" means a natural group of bees having a queen or queens, which is the progeny of a parent colony, without a hive, and not a feral colony.

(13) "Disease" means American foulbrood, European foulbrood, chalkbrood, nosema, sacbrood, or any other viral, fungal, bacterial or insect-related disease affecting bees or their brood.

(14) "Regulated bee pests" means a disease of bees for which maximum allowable limits of infection, or mites, or other parasites are set in rule.

(15) "Hive" means a manufactured receptacle or container prepared for the use of bees, that includes movable frames, combs, and substances deposited into the hive by bees.

(16) "Person" means a natural person, individual, firm, partnership, company, society, association, corporation or every officer, agent, or employee of one of these entities.

(17) "Bee pests" means a disease, mite, or other parasite that causes injury to bees.

(18) "Nets" means a device that is made of fabricated material and that is designed and utilized to prevent the escape of bees from bee hives during transit.

(19) "Apparently free" means no specified bee pest was found during inspection of survey activities.

(20) "Substantially free" means levels of specified bee pests found during inspection or survey activities were within established tolerances.

(21) "Africanized honey bee" means any bee of the subspecies *Apis mellifera scutellata*.

(22) "Super" means the portion of a hive in which honey is stored by bees.

(23) "Broker" means a person, engaged in pollinating agricultural crops, using hives that are owned by another person.

(24) "Grower" means a person engaged in producing agricultural crops, and a user of honey bees for pollination of the crops.

Sec. 2. RCW 15.60.007 and 1993 c 89 s 2 are each amended to read as follows:

There is created within the department of agriculture an industry apiary (~~(inspection)~~) program. The director shall: Provide regulation and inspection services, assure availability of bee colonies for pollination, facilitate the interstate

movement of honey bees, promote improved apicultural practices, combat bee pests that pose an economic threat to the industry, and, in cooperation with the cooperative extension program of Washington State University, provide education to promote the vitality of the apiary industry.

Sec. 3. RCW 15.60.010 and 1993 c 89 s 3 are each amended to read as follows:

An apiary advisory committee is established to advise the director on the administration of this chapter. The apiary advisory committee may consist of up to eleven members.

(1) The committee shall include six apiarists, appointed by the director, and representing the major geographical divisions of the beekeeping industry in the state as established in rule. In making an appointment, the director shall seek nominations from the beekeepers' organizations within the geographic area and from nonaffiliated apiarists. Apiarists may nominate themselves.

(2) The committee shall include the director and a representative from the Washington State University apiary program or cooperative extension.

(3) The committee may include up to three representatives of receivers of pollination services.

(4) The terms of the apiarist members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason, the vacancy shall be filled by the director under the provisions of this section.

(5) The committee shall meet at least once yearly. It may also meet at the call of the director or the request of any three members of the committee. Members of the committee shall serve without compensation but shall be reimbursed for travel expenses incurred in attending meetings of the ~~((board))~~ committee and any other official duty authorized by the ~~((board))~~ committee and approved by the director, pursuant to RCW 43.03.050 and 43.03.060, if apiarists are charged a registration fee, under RCW 15.60.050, to cover the expenses of the committee.

Sec. 4. RCW 15.60.040 and 1993 c 89 s 8 are each amended to read as follows:

(1) There is hereby established a fee on the use, by growers of agricultural crops, of bee pollination services provided by others. This pollination service fee is in the amount of fifty cents for each setting of each hive containing a colony that is used by the grower. The fee shall be paid by the grower using the service, shall be collected by the beekeeper providing the service, and shall be remitted by the beekeeper to the department as provided by rules adopted by the director. All such fees shall be deposited in the industry apiary program account. Revenues from these fees shall be directed to use in providing services to the

apiary industry that assist in ensuring the vitality and availability of bees for commercial pollination services for the agricultural industry.

(2) There is established an industry apiary ((inspection)) program account within the agricultural local fund. All money collected under this chapter including fees for requested services, required inspections, or treatments, ~~((and))~~ registration fees, and apiary assessments shall be placed in the industry apiary ((inspection)) program account. Money in the account may only be used to carry out the purposes of this chapter. No appropriation is required for disbursement from the industry apiary ((inspection)) program account.

Sec. 5. RCW 15.60.043 and 1993 c 89 s 10 are each amended to read as follows:

The inspection fees, registration fees, pollination service fees, and other charges provided in this chapter shall become due and payable upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform an inspection or certification service for a person in arrears unless the person makes payment in full prior to such inspection or certification service.

Sec. 6. RCW 15.60.050 and 1993 c 89 s 11 are each amended to read as follows:

Each person owning one or more hives with bees, brokers of hives, and beekeepers resident in other states who operate hives in Washington, shall register ~~((that ownership))~~ with the director on or before April 1st each year.

(1) Registration application shall include the name, address, and phone number of the owner or broker, the number of colonies of bees owned, brokered, or operated in Washington, and such registration fee as may be prescribed in rule under subsection (2) of this section. The director shall issue to each resident apiarist registered with the department an apiarist identification number. The apiarist identification number shall be displayed on hives of an apiary in a manner prescribed by the director in rule.

(2) A registration fee may be set in rule by the director, with the advice of the apiary advisory committee. The fee shall be used for covering the expenses of the apiary advisory committee and may be used for supporting the industry apiary program of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee.

Passed the House March 3, 1994.

Passed the Senate March 7, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 179

[Substitute House Bill 2707]

TRANSPORTATION IMPROVEMENT FUNDING

AN ACT Relating to transportation improvement funding procedures; amending RCW 35.77.010, 36.81.121, 46.68.090, 46.68.095, 46.68.100, 47.26.040, 47.26.080, 47.26.084, 47.26.090, 47.26.121, 47.26.140, 47.26.160, 47.26.170, 47.26.185, 47.26.190, 47.26.260, 47.26.270, 47.26.305, 47.26.425, 47.26.4252, 47.26.4254, 47.26.440, 47.26.450, 47.26.460, 47.26.500, 47.26.505, and 82.36.025; adding new sections to chapter 47.26 RCW; and repealing RCW 47.26.042, 47.26.043, 47.26.180, 47.26.220, 47.26.230, 47.26.240, 47.26.265, 47.26.310, 47.26.315, and 47.26.430.

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

Sec. 1. RCW 35.77.010 and 1990 1st ex.s. c 17 s 59 are each amended to read as follows:

(1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive street program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city street needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive street program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated street construction program. The program may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

~~((The six year program of each city lying within an urban area shall contain a separate section setting forth the six year program for arterial street construction based upon its long range construction plan and formulated in accordance with rules of the transportation improvement board. The six year program for arterial street construction shall be submitted to the transportation improvement board forthwith after its annual revision and adoption by the legislative body of the city. The six year program for arterial street construction shall be based upon estimated revenues available for such construction together with such additional sums as the legislative authority may request for urban arterials from the urban arterial trust account or the transportation improvement account for the six year period. The arterial street construction program shall provide for a more rapid rate of completion of the long range construction needs of principal arterial streets than for minor and collector arterial streets, pursuant to rules of the transportation improvement board. PROVIDED, That urban arterial trust funds made available to the group of incorporated cities lying outside the boundaries~~

~~of federally approved urban areas within each region need not be divided between functional classes of arterials but shall be available for any designated arterial street-))~~

(2) Each six-year program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for bicycle, pedestrian, and equestrian purposes.

Sec. 2. RCW 36.81.121 and 1990 1st ex.s. c 17 s 58 are each amended to read as follows:

(1) Before July 1st of each year, the legislative authority of each county with the advice and assistance of the county road engineer, and pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive road program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated road construction program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

~~(2) ((The six year program of each county having an urban area within its boundaries shall contain a separate section setting forth the six year program for arterial road construction based upon its long range construction plan and formulated in accordance with regulations of the transportation improvement board. The six year program for arterial road construction shall be submitted to the transportation improvement board forthwith after its annual revision and adoption by the legislative authority of each county. The six year program for arterial road construction shall be based upon estimated revenues available for such construction together with such additional sums as the legislative authority of each county may request for urban arterials from the urban arterial trust account or the transportation improvement account for the six year period. The arterial road construction program shall provide for a more rapid rate of completion of the long range construction needs of principal arterial roads than for minor and collector arterial roads, pursuant to regulations of the transportation improvement board.~~

(3)) Each six-year program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will

expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for bicycles, pedestrians, and equestrian purposes.

Sec. 3. RCW 46.68.090 and 1991 c 342 s 56 are each amended to read as follows:

(1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for the following purposes:

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly;

(c) From April 1, 1992, through March 31, 1996, for distribution to the transfer relief account, hereby created in the motor vehicle fund, an amount not to exceed three hundred twenty-five one-thousandths of one percent;

(d) For distribution to the rural arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(2) and 46.68.095(3);

(e) For distribution to the urban arterial trust account in the motor vehicle fund, an amount as provided in RCW 46.68.100(4) and 82.36.025(3);

(f) For distribution to the transportation improvement account in the motor vehicle fund, an amount as provided in RCW 46.68.095(1);

(g) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(2);

(h) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(4);

(i) For distribution to the motor vehicle fund to be allocated to cities and towns as provided in RCW 46.68.110, an amount as provided in RCW 46.68.095(5);

(j) For distribution to the motor vehicle fund to be allocated to counties as provided in RCW 46.68.120, an amount as provided in RCW 46.68.095(6);

(k) For expenditure for highway purposes of the state as defined in RCW 46.68.130, an amount as provided in RCW 82.36.025(4) and 46.68.095(7);

(l) For distribution to the small city account, hereby created in the motor vehicle fund, an amount as provided for in RCW 46.68.095(1), 46.68.100(9), and 82.36.025(3).

(2) The amount accruing to the motor vehicle fund by virtue of the motor vehicle fuel tax and the special fuel tax and remaining after payments, distributions, and expenditures as provided in this section shall, for the purposes of this chapter, be referred to as the "net tax amount."

Sec. 4. RCW 46.68.095 and 1990 c 42 s 103 are each amended to read as follows:

All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax imposed by RCW 82.36.025(5) shall be distributed monthly by the state treasurer in the following proportions:

(1) Through June 30, 1995, one and one-half cents shall be deposited in the transportation improvement account and expended in accordance with RCW 47.26.084. After June 30, 1995, eighty-seven percent of one and one-half cents shall be deposited in the transportation improvement account and expended in accordance with section 11 of this act and thirteen percent of one and one-half cents shall be deposited in the small city account and expended in accordance with section 9 of this act.

(2) From April 1, 1991, seventy-five one-hundredths of one cent shall be deposited in the special category C account in the motor vehicle fund for special category C projects. Special category C projects are category C projects as defined in RCW 47.05.030(3) that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

- (a) Accident experience; and
- (b) Fatal accident experience; and
- (c) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and
- (d) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection.

(3) Twenty-five one-hundredths of one cent shall be deposited in the rural arterial trust account in the motor vehicle fund.

(4) Forty-five one-hundredths of one cent shall be deposited in the county arterial preservation account. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used.

(5) One-half of one cent shall be allocated to cities and towns as provided in RCW 46.68.110.

(6) From April 1, 1990, through March 31, 1991, thirty one-hundredths of one cent and after March 31, 1991, fifty-five one-hundredths of one cent shall be allocated to counties as provided in RCW 46.68.120.

(7) One cent shall be deposited in the motor vehicle fund and shall be expended for highway purposes of the state as defined in RCW 46.68.130.

Sec. 5. RCW 46.68.100 and 1991 c 310 s 2 are each amended to read as follows:

From the net tax amount in the motor vehicle fund there shall be paid monthly as funds accrue the following sums:

(1) To the cities and towns, to be distributed as provided by RCW 46.68.110, sums equal to six and ninety-two hundredths percent of the net tax amount;

(2) To the cities and towns, to be expended as provided by RCW 46.68.115, sums equal to four and sixty-one hundredths percent of the net tax amount;

(3) To the counties, sums equal to twenty-two and seventy-eight hundredths percent of the net tax amount (a) out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725, and (b) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(4) To the urban arterial trust account in the motor vehicle fund, (a) through June 30, 1995, sums equal to seven and twelve hundredths percent of the net tax amount, (b) and after June 30, 1995, ninety-five percent of seven and twelve hundredths percent of the net tax amount;

(5) To the state, to be expended as provided by RCW 46.68.130, sums equal to forty-five and twenty-six hundredths percent of the net tax amount;

(6) To the state, to be expended as provided by RCW 46.68.150 as now or hereafter amended, sums equal to six and ninety-five hundredths percent of the net tax amount;

(7) To the Puget Sound capital construction account in the motor vehicle fund sums equal to three and twenty-one hundredths percent of the net tax amount;

(8) To the Puget Sound ferry operations account in the motor vehicle fund sums equal to three and fifteen hundredths percent of the net tax amount;

(9) After June 30, 1995, to the small city account in the motor vehicle fund, sums equal to five percent of seven and twelve hundredths percent of the net tax amount.

Nothing in this section or in RCW 46.68.090 or 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor and special vehicle fuels.

NEW SECTION. Sec. 6. A new section is added to chapter 47.26 RCW to read as follows:

The term "board" as used in this chapter means the transportation improvement board.

Sec. 7. RCW 47.26.040 and 1984 c 7 s 153 are each amended to read as follows:

The term "urban area" as used in this chapter means every area of this state designated as an urban area by the department ~~((with the approval of the federal secretary of transportation in accordance with federal law, hereafter referred to as federally approved urban areas, or areas within incorporated cities))~~ in cooperation with the board and regional transportation planning organizations.

Sec. 8. RCW 47.26.080 and 1991 sp.s. c 32 s 32 are each amended to read as follows:

There is hereby created in the motor vehicle fund the urban arterial trust account. The intent of the urban arterial trust account program is to improve the urban arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state of Washington. To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law. The project shall consider safety, mobility, and physical characteristics of the roadway and must be partially funded by local government.

All moneys deposited in the motor vehicle fund to be credited to the urban arterial trust account shall be expended for the construction and improvement of city arterial streets and county arterial roads within urban areas, for expenses of the transportation improvement board in accordance with RCW 47.26.140, or for the payment of principal or interest on bonds issued for the purpose of constructing or improving city arterial streets and county arterial roads within urban areas, or for reimbursement to the state, counties, cities, and towns in accordance with RCW 47.26.4252 and 47.26.4254, the amount of any payments made on principal or interest on urban arterial trust account bonds from motor vehicle or special fuel tax revenues which were distributable to the state, counties, cities, and towns.

The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to any county, city, or town identified by the governor under RCW 36.70A.340.

NEW SECTION. **Sec. 9.** A new section is added to chapter 47.26 RCW to read as follows:

The intent of the small city account program is to preserve and improve the roadway system consistent with local needs of incorporated cities and towns with a population of less than five thousand. The board shall adopt rules and procedures to govern the allocation of funds distributed to the small city account. All moneys deposited in the motor vehicle fund to be credited to the small city account must be expended for roadway projects, for expenses of the board, or for the payment of principal or interest on bonds issued for the purpose of constructing or improving roadway facilities or for reimbursement to the state, counties, cities, and towns in accordance with RCW 47.26.4252 and 47.26.4254, the amount of any payments made on principal or interest on urban arterial trust account bonds from motor vehicle or special fuel tax revenues that were

distributable to the state, counties, cities, and towns. The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to a city or town identified by the governor under RCW 36.70A.340.

Sec. 10. RCW 47.26.084 and 1988 c 167 s 2 are each amended to read as follows:

The transportation improvement account is hereby created in the motor vehicle fund. The board shall adopt rules and procedures which shall govern the allocation of funds in the transportation improvement account at such time as funds become available. All projects selected for funding before the fiscal year 1996 transportation improvement account program are governed by this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year and shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

Of the amount made available to the transportation improvement board from the transportation improvement account for improvement projects:

(1) Eighty-seven percent shall be allocated to urban counties, to cities with a population of ~~((over))~~ five thousand and over, and to transportation benefit districts. Improvement projects may include, but are not limited to, multi-agency projects and ~~((suburban))~~ arterial improvement projects in fast-growing areas.

To be eligible to receive these funds, a project must be (a) consistent with state, regional, and local transportation plans and consideration shall be given to the project's relationship, both actual and potential, with rapid mass transit and at such time as a rail plan is developed by the rail development commission, projects must be consistent therewith, (b) necessitated by existing or reasonably foreseeable congestion levels attributable to economic development or growth, and (c) partially funded by local government or private contributions, or a combination of such contributions. The board shall, for those projects meeting the eligibility criteria, determine what percentage of each project is funded by local and/or private contribution. Priority consideration shall be given to those projects with the greatest percentage of local and/or private contribution.

Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board.

(2) Thirteen percent shall be allocated by the board to cities and towns with a population of less than five thousand ~~((or less))~~ for street improvement projects in a manner determined by the board.

NEW SECTION. **Sec. 11.** A new section is added to chapter 47.26 RCW to read as follows:

Transportation improvement account projects selected for funding programs after fiscal year 1995 are governed by the requirements of this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year to urban counties, cities with a population of five thousand and over, and to transportation benefit districts. Projects may include, but are not limited to, multi-agency projects and arterial improvement projects in fast-growing areas. The board shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our state-wide transportation system needs.

To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law and consideration must have been given to the project's relationship, both actual and potential, with the state-wide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions. Priority consideration shall be given to those projects with the greatest percentage of local or private contribution, or both.

Within one year after board approval of an application for funding, the lead agency shall provide written certification to the board of the pledged local and private funding for the phase of the project approved. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board.

Sec. 12. RCW 47.26.090 and 1988 c 167 s 14 are each amended to read as follows:

The term "arterial" as used in this chapter means any state highway, county road, or city street, in an urban area, that is functionally classified (~~by the federal highway administration~~) as a principal arterial, minor arterial, or collector street by the department in cooperation with the board, regional transportation planning organizations, cities, and counties. The board shall develop criteria and procedures for designating arterials in the incorporated cities and towns lying outside urban areas.

Sec. 13. RCW 47.26.121 and 1993 c 172 s 1 are each amended to read as follows:

(1) There is hereby created a transportation improvement board of eighteen members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) the assistant secretary of the department of transportation whose primary responsibilities relate to planning and public transportation; (c) the assistant secretary for local programs of the department of

transportation; (d) a representative of a public transit system; (e) a private sector representative; and (f) a public member.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board; one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one shall be a county executive, councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county member of the board shall be from any one county. No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) The transit member shall be a general manager, executive director, or transit director of a public transit system.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) The public member shall have professional experience in transportation or land use planning, a demonstrated interest in transportation issues, and involvement with community groups or grass roots organizations.

(7) Appointments of county, city, transit, private sector, and public representatives shall be made by the secretary of the department of transportation. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, and the Washington state

transit association for the transit member. The private sector and public members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector or the public member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector or public member resigns or is unable or unwilling to serve.

(8) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

(9) The board shall elect a chair from among its members for a two-year term.

(10) Expenses of the board (~~(, including administration of the transportation improvement program,))~~ shall be paid (~~(from the urban arterial account))~~ in accordance with RCW 47.26.140.

(11) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority.

Sec. 14. RCW 47.26.140 and 1988 c 167 s 16 are each amended to read as follows:

The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, small city account, city hardship assistance account, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation.

Sec. 15. RCW 47.26.160 and 1988 c 167 s 18 are each amended to read as follows:

The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials (~~(that meet the requirements for urban development;~~

~~(3) Report biennially on the first day of November of the even-numbered years to the department and to the chairs of the house and senate transportation committees, including one copy to the staff of each of the committees, regarding~~

~~progress of cities and counties in developing long-range plans for their urban arterial construction, programming of urban arterial construction work, and the allocation of funds)).~~

Sec. 16. RCW 47.26.170 and 1988 c 167 s 19 are each amended to read as follows:

~~((The legislative authority of))~~ Each county ((or city lying within of)) having within its boundaries an urban area and cities and towns shall prepare((adopt)) and submit to the transportation improvement board ~~((a long-range plan for arterial construction, taking into account the comprehensive land use plan of each such jurisdiction and setting forth arterial construction needs through a six-year advance planning period. The long-range arterial construction plans shall be revised by))~~ arterial inventory data required to determine the long-range arterial construction needs. The counties ~~((and)),~~ cities, and towns shall revise the arterial inventory data every ((two)) four years to show the current arterial construction needs through the advanced planning period, and as revised shall ~~((be submitted))~~ submit them to the transportation improvement board during the first week of January ~~((of))~~ every ((even-numbered)) four years beginning in 1996. ~~The ((long-range plans))~~ inventory data shall be prepared pursuant to guidelines established by the transportation improvement board. ~~((Upon receipt of the long-range arterial construction plans of the several counties and cities, the transportation improvement board shall revise the construction needs for urban arterials set forth in the plans as necessary to conform with its uniform standards for establishing construction needs of the counties and cities.))~~ As information is updated, it shall be made available to the commission and the legislative transportation committee.

Sec. 17. RCW 47.26.185 and 1988 c 167 s 21 are each amended to read as follows:

The transportation improvement board may adopt rules establishing qualifications for cities and counties administering and supervising the design and construction of projects financed in part from ~~((the urban arterial trust account or the transportation improvement account))~~ funds administered by the board. The rules establishing qualification shall take into account the resources and population of the city or county, its permanent engineering staff, its design and construction supervision experience, and other factors the board deems appropriate. Any city or county failing to meet the qualifications established by the board for administering and supervising a project shall contract with a qualified city or county or the department for the administration and supervision of the design and construction of any approved project as a condition for receiving ~~((account))~~ funds for the project.

Sec. 18. RCW 47.26.190 and 1988 c 167 s 22 are each amended to read as follows:

~~((1) At the beginning of each biennium for the urban arterial trust account, the transportation improvement board shall establish apportionment percentages for the five regions defined in RCW 47.26.050 in the following manner:~~

~~(a) One third in the ratio which the population of the urban areas of each region bears to the total population of all of the urban areas of the state as last determined by the office of financial management;~~

~~(b) One third in the ratio which the vehicle to mile ratio traveled on the classified arterial system prescribed in RCW 47.26.180, within the urban areas of each region bears to the total vehicle to mile ratio traveled on all classified urban arterials; and~~

~~(c) One third in the ratio which the city and county urban arterial needs within the urban areas of each region bears to the total urban arterial needs on city and county urban arterials within all urban areas of the state as last revised by the transportation improvement board.~~

~~Except as otherwise provided in subsection (3) of this section, such apportionment percentages shall be used once each calendar quarter by the transportation improvement board to apportion funds credited to the urban arterial trust account which are available for expenditure for urban arterial projects: PROVIDED, That any funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from bond sales in accordance with RCW 47.26.420 through 47.26.427 shall be apportioned according to the percentages for the five regions established for the biennium when the bonding authority was obligated to projects.~~

~~(2) All amounts credited to the urban arterial trust account, except those provided for in subsection (3) of this section and any excise tax revenues that may be required to repay the three series of urban arterial bonds or the interest thereon when due, after apportionment to each region, shall be divided on the basis of relative population established at the beginning of each biennium by the office of financial management between (a) the group of cities and that portion of those counties within federally approved urban areas and (b) the group of incorporated cities outside the boundaries of federally approved urban areas: PROVIDED, That funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from the sale of bonds in accordance with RCW 47.26.420 through 47.26.427 shall be divided on the basis of relative population percentages established for the biennium when the bonding authority was obligated to projects. Within each region, funds divided between the groups identified under (a) and (b) of this subsection shall then be allocated by the transportation improvement board to incorporated cities and counties, as the case may be, for the construction of specific urban arterial projects in accordance with the procedures set forth in RCW 47.26.240.~~

~~(3) At the beginning of each biennium the transportation improvement board shall establish apportionment percentages for each of the five regions for the apportionment of the proceeds from the sale of fifteen million dollars of series II bonds and sixteen million dollars of series III bonds authorized by RCW~~

~~47.26.420, as now or hereafter amended, in the ratio which the population of the incorporated cities and towns lying outside the boundaries of federally approved urban areas of each region bears to the total population of all incorporated cities and towns of the state lying outside the boundaries of federally approved urban areas, as such populations are determined at the beginning of each biennium by the office of financial management. Such apportionment percentages shall be used once each calendar quarter by the transportation improvement board to apportion funds credited to the urban arterial trust account which are available for expenditure for urban arterial projects under this subsection: PROVIDED, That any funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from the sale of bonds in accordance with RCW 47.26.420 through 47.26.427 shall be apportioned with percentages for the five regions established for the biennium when the bonding authority was obligated to projects. Funds apportioned to each region shall be allocated by the transportation improvement board to incorporated cities lying outside the boundaries of federally approved urban areas, for the construction of specific urban arterial projects in accordance with the procedures set forth in RCW 47.26.240.)~~ The board shall adopt rules that provide geographical diversity in selecting improvement projects to be funded from the urban arterial trust account and small city account funds.

Sec. 19. RCW 47.26.260 and 1988 c 167 s 26 are each amended to read as follows:

~~((1) Upon completion of a preliminary proposal, the county, city, or transportation benefit district submitting said proposal shall submit to the transportation improvement board its voucher for payment of the urban arterial trust account or transportation improvement account, both hereinafter referred to in this section as account, share of the cost. Upon the completion of an approved construction project, the county, city, or transportation benefit district constructing the project shall submit to the transportation improvement board its voucher for the payment of the appropriate account share of the cost. The chairman of the transportation improvement board or his designated agent shall approve such voucher when proper to do so, for payment from the appropriate account to the county, city, or transportation benefit district submitting the voucher.~~

~~((2))~~ The transportation improvement board ~~((may))~~ shall adopt ~~((regulations))~~ rules providing for the approval of payments of funds in the accounts to a county, city, town, or transportation benefit district for costs of ~~((preliminary proposal))~~ predesign, design, engineering, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the account share of the costs ~~((of construction))~~ incurred to the date of the voucher covering such payment.

Sec. 20. RCW 47.26.270 and 1988 c 167 s 27 are each amended to read as follows:

Counties ~~((and))~~, cities, towns, and transportation benefit districts receiving funds from the ~~((urban arterial trust account for construction of arterials))~~ board shall provide such matching funds as ~~((shall be))~~ established by ~~((regulations))~~ rules adopted by the transportation improvement board. ~~((Matching requirements shall be established after appropriate studies by the board taking into account))~~ When determining matching requirements, the board shall consider (1) financial resources available to counties and cities to meet arterial needs, (2) the amounts and percentages of funds available for road or street construction traditionally expended by counties and cities on arterials, (3) in the case of counties, the relative needs of arterials lying outside urban areas, and (4) the requirements necessary to avoid diversion of funds traditionally expended for arterial construction to other street or road purposes or to nonhighway purposes ~~((+ PROVIDED HOWEVER, That for projects funded subsequent to July 1, 1977, cities and counties may use as matching funds any moneys received from any source, except such moneys which by law may not be used for the purposes set forth in this chapter))~~.

Sec. 21. RCW 47.26.305 and 1988 c 167 s 28 are each amended to read as follows:

~~((Each city and county eligible for receipt of urban arterial trust funds is hereby authorized and directed to establish a system of bicycle routes throughout its jurisdiction. Such))~~ Bicycle routes shall, when established in accordance with ~~((standards adopted by the transportation improvement board,))~~ RCW 47.06.100 be eligible for establishment, improvement, and upgrading with ~~((urban arterial trust))~~ board funds ~~((when accomplished in connection with an arterial project))~~. The board shall adopt rules and procedures that will encourage the development of a system of bicycle routes within counties, cities, and towns.

Sec. 22. RCW 47.26.425 and 1977 ex.s. c 317 s 20 are each amended to read as follows:

Any funds required to repay the first authorization of two hundred million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the urban arterial trust account and the small city account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Sec. 23. RCW 47.26.4252 and 1983 1st ex.s. c 49 s 23 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account and the small city account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues.

Sec. 24. RCW 47.26.4254 and 1988 c 167 s 30 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and RCW 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account and the small city account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state,

counties, cities, and towns pursuant to RCW 46.68.100, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account and the small city account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.100(1) and to the counties pursuant to RCW 46.68.100~~((2))~~(3). Of the counties', cities', and towns' share of any additional amounts required in the fiscal year ending June 30, 1984, fifteen percent shall be taken from the counties' distributive share and eighty-five percent from the cities' and towns' distributive share. Of the counties', cities', and towns' share of any additional amounts required in each fiscal year thereafter, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account and the small city account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds.

Sec. 25. RCW 47.26.440 and 1988 c 167 s 32 are each amended to read as follows:

Not later than November 1st of each even-numbered year the transportation improvement board shall prepare and present to the commission for comment and recommendation an adopted budget for expenditures from ~~((the urban arterial trust account and the transportation improvement account))~~ funds administered by the board during the ensuing biennium. The budget shall contain an estimate of the revenues to be credited to the ~~((urban arterial trust account and the transportation improvement))~~ several accounts and the amount, if any, of bond proceeds which the board determines should be made available ~~((to the urban arterial trust account))~~

~~((The commission shall include the budget for the transportation improvement board as a separate section of the transportation budget which it shall submit to the governor and the legislature at the time of its convening.))~~

Sec. 26. RCW 47.26.450 and 1988 c 167 s 33 are each amended to read as follows:

~~((At the time the transportation improvement board reviews the six year program of each county and city each even numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 47.26.440, the portion of the urban arterial construction program scheduled to be performed during the biennial period beginning the following July 1st.)) The board shall adopt rules and procedures to govern the allocation of funds subject to the appropriations actually approved by the legislature~~((, the board shall as soon as feasible approve urban arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 47.26.240. In the case of projects whose total cost exceeds one million dollars as reflected in the six year program, the agency with jurisdiction shall furnish to the board a value engineering study performed by an interagency team approved by the board, to determine whether the proposed improvement provides a cost effective solution for the project before the board may approve urban arterial trust funds for either the preliminary or construction phase of the project. The board may authorize a variance from the value engineering study upon a determination that the study is not warranted. The board may also require a value engineering study for a project whose total cost is less than one million dollars upon a determination by the board that the study is warranted.~~~~

~~The board shall authorize urban arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve urban arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.~~

~~The board may, within the constraints of available urban arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting local government that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six year program of the local government was developed. Such proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 47.26.220).~~

The board shall develop rules and procedures to require value engineering studies performed by an interagency team for certain board funded projects. When determining the process, the board shall consider the project cost, length, and complexity.

Sec. 27. RCW 47.26.460 and 1969 ex.s. c 171 s 7 are each amended to read as follows:

~~((Whenever the board approves an urban arterial project it shall determine the amount of urban arterial trust account funds to be allocated for such project.~~

~~The allocation shall be based upon information contained in the six year plan submitted by the county or city seeking approval of the project and upon such further investigation as the board deems necessary.)~~ The board shall adopt reasonable ~~((regulations))~~ rules pursuant to which ~~((urban arterial trust account))~~ funds allocated to a project may be increased upon a subsequent application of the county ~~((or))~~, city, town, or transportation benefit district constructing the project. The ~~((regulations))~~ rules adopted by the board shall ~~((take into account, but shall not be limited to;))~~ consider the following factors: (1) The financial effect of increasing the original allocation for the project upon other urban arterial projects either approved or requested; (2) whether the project for which an additional ~~((allocation))~~ authorization is requested can be reduced in scope while retaining a usable segment; (3) whether the ~~((original))~~ cost of the project shown in the ~~((applicant's six year program))~~ original application was based upon reasonable engineering estimates; and (4) whether the requested additional ~~((allocation))~~ authorization is to pay for an expansion in the scope of work originally approved.

Sec. 28. RCW 47.26.500 and 1993 c 440 s 1 are each amended to read as follows:

In order to provide funds necessary to meet the urgent construction needs on state, county, and city transportation projects ~~((within urban areas))~~, there are hereby authorized for issuance general obligation bonds of the state of Washington in the sum of fifty million dollars, which shall be issued and sold in such amounts and at such times as determined to be necessary by the state transportation improvement board. The amount of such bonds issued and sold under the provisions of RCW 47.26.500 through 47.26.507 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of state, county, and city transportation projects ~~((in urban areas))~~. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the ~~((state transportation commission on behalf of the transportation improvement))~~ board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the ~~((state transportation))~~ board. The board shall report all bond sale requests to the commission.

Sec. 29. RCW 47.26.505 and 1993 c 440 s 6 are each amended to read as follows:

Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the transportation improvement account in the motor vehicle fund and the sums received by the small city account in the motor vehicle fund under RCW 46.68.095, and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and

towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Sec. 30. RCW 82.36.025 and 1991 c 342 s 57 are each amended to read as follows:

The motor vehicle fuel tax rate shall be computed as the sum of the tax rate provided in subsection (1) of this section and the additional tax rates provided in subsections (2) through (5) of this section.

(1) A motor vehicle fuel tax rate of seventeen cents per gallon shall apply to the sale, distribution, or use of motor vehicle fuel.

(2) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the rural arterial trust account in the motor vehicle fund for expenditures under RCW 36.79.020.

(3) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the urban arterial trust account in the motor vehicle fund. After June 30, 1995, ninety-five percent of this revenue shall be deposited in the urban arterial trust account in the motor vehicle fund and five percent shall be deposited in the small city account in the motor vehicle fund.

(4) An additional motor vehicle fuel tax rate of one-third cent per gallon shall be applied to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the motor vehicle fund to be expended for highway purposes of the state as defined in RCW 46.68.130.

(5) An additional motor vehicle fuel tax rate of four cents per gallon from April 1, 1990, through March 31, 1991, and five cents per gallon from April 1, 1991, applies to the sale, distribution, or use of motor vehicle fuel. The proceeds from the additional tax rate under this subsection, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor fuel tax rate provided in this section, shall be deposited in the motor vehicle fund and shall be distributed by the state treasurer according to RCW 46.68.095.

NEW SECTION. **Sec. 31.** The following acts or parts of acts are each repealed:

- (1) RCW 47.26.042 and 1973 1st ex.s. c 126 s 4;
- (2) RCW 47.26.043 and 1973 1st ex.s. c 126 s 5;
- (3) RCW 47.26.180 and 1988 c 167 s 20, 1979 ex.s. c 122 s 8, 1977 ex.s. c 317 s 13, 1975 1st ex.s. c 253 s 2, & 1967 ex.s. c 83 s 24;
- (4) RCW 47.26.220 and 1989 c 160 s 1, 1988 c 167 s 23, & 1967 ex.s. c 83 s 28;
- (5) RCW 47.26.230 and 1988 c 167 s 24, 1984 c 7 s 158, & 1967 ex.s. c 83 s 29;
- (6) RCW 47.26.240 and 1988 c 167 s 25, 1977 ex.s. c 317 s 15, & 1967 ex.s. c 83 s 30;
- (7) RCW 47.26.265 and 1988 c 167 s 3;
- (8) RCW 47.26.310 and 1988 c 167 s 29, 1984 c 7 s 160, & 1974 ex.s. c 141 s 3;
- (9) RCW 47.26.315 and 1974 ex.s. c 141 s 6; and
- (10) RCW 47.26.430 and 1988 c 167 s 31, 1981 c 315 s 12, & 1967 ex.s. c 83 s 53.

Passed the House February 11, 1994.

Passed the Senate March 8, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 180

[House Bill 2743]

SPECIAL EDUCATION STUDENTS—PROVISION OF HEALTH SERVICES

AN ACT Relating to health services provided by school districts; amending RCW 74.09.5243, 74.09.5247, 74.09.5249, 74.09.5253, and 28A.150.390; adding new sections to chapter 74.09 RCW; creating a new section; and repealing RCW 28A.155.150.

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

Sec. 1. RCW 74.09.5243 and 1993 c 149 s 2 are each amended to read as follows:

~~((For the purposes of))~~ Unless the context clearly requires otherwise, the following definitions apply throughout RCW 74.09.5241 through 74.09.5253 ((and 28A.155.150, the terms)) and sections 5 through 7 of this act.

(1) "District" means a school district, educational service district, or educational cooperatives offering special education services under chapter 28A.155 RCW.

(2) "Medical assistance" and "medicaid" means federal and state-funded programs under which medical ((care)) services are provided under Title XIX of the federal social security act.

(3) "Medical services" means district services that qualify for medicaid funding.

Sec. 2. RCW 74.09.5247 and 1993 c 149 s 4 are each amended to read as follows:

(1) Chapter 149, Laws of 1993 does not apply to contracts between individual ~~((school))~~ districts and private firms entered into for the purpose of billing either medicaid or private insurers, or both, for ~~((health))~~ medical services and agreed to before April 30, 1993, except as provided in RCW 28A.155.150(2).

(2) A ~~((school))~~ district may elect to act as its own billing agent as of the start of any school year. For a ~~((school))~~ district being served by the state-wide billing agent, the district shall notify the billing agent in writing, no less than thirty days before the start of the school year, of its intent to terminate the agency relationship. A district that acts as its own billing agent ~~((may retain))~~ or a district with a preexisting contract under subsection (1) of this section is entitled to an administrative fee ~~((proportional))~~ equivalent to that of the state-wide billing agent.

Sec. 3. RCW 74.09.5249 and 1993 c 149 s 5 are each amended to read as follows:

(1) The agency awarded the contract under RCW 74.09.5245 shall:

(a) Enroll all ~~((school))~~ districts in this state, except those with preexisting contracts under RCW 74.09.5247, as medicaid providers ~~((by))~~ effective the beginning of the 1993-94 school year;

(b) Develop a state-wide system of billing the department and private insurers for medical services provided in special education programs;

(c) Train health care practitioners employed by or contracting with ~~((school))~~ districts in medicaid and insurer billing;

(d) Verify the medicaid eligibility of students enrolled in special education programs in each ~~((educational-service))~~ district;

(e) Provide ongoing technical assistance to practitioners and districts; and

(f) Process and forward all medicaid claims to the department and all other claims to private insurers.

(2) For each student, individual ~~((school))~~ districts may, in consultation with the billing agent, deliver to the student's parent or guardian a letter, prepared by the billing agent, requesting the consent of the parent or guardian to bill the student's health insurance carrier for services provided through the special education program. If a district chooses to do this, the letter must be accompanied by a consent form, on which the parent may identify the student's health insurance carrier so that the billing agent may bill the carrier for medical services provided to the student. The letter must clearly state the following:

(a) That the billing program is designed in part to raise additional funds to improve education services;

(b) That under no circumstances will the parent or guardian be personally charged for any portion of the bill not paid by the insurer, including copayments, deductibles, or uncovered services;

(c) That the amount of the billing will apply to the policy's annual deductible even though the parent will not be billed for the amount of the deductible;

(d) That the amount of the billing, will, however, apply towards annual or lifetime benefit caps if these are included in the policy;

(e) That it is possible that their premiums would be increased as a result of their consent;

(f) That if any of the possible negative consequences of consent were to affect them, they are free to withdraw their consent at any time; and

(g) That their consent is entirely voluntary and that the services the student receives through the ~~((school))~~ district will not be affected by their willingness or refusal to consent to the billing of their private insurer.

Sec. 4. RCW 74.09.5253 and 1993 c 149 s 7 are each amended to read as follows:

(1) Each ~~((educational service))~~ district ~~((in the state))~~ shall participate in the program of billing for medical services ~~((under RCW 74.09.5249 and))~~ provided in the district's special education program. Each participating district shall provide the ~~((billing agent))~~ superintendent of public instruction with a list, ~~((at the start of each academic quarter))~~ as of the first school day in October, December, and May of each year, of all students enrolled in special education programs within the area served by the ~~((educational service))~~ district, for purposes of verifying the medicaid eligibility of the students.

(2) A person employed by or contracting with a ~~((school))~~ district who provides ~~((services within the categories established by the))~~ medical ~~((assistance administration under RCW 74.09.5254))~~ services shall provide the billing agent with information necessary to promptly complete monthly billings for each medicaid-eligible student he or she serves as part of the district's special education program.

(3) The superintendent of public instruction shall submit to the legislature at the beginning of each legislative session a report indicating the district-by-district participation and the medicaid and private insurance payment receipts during the preceding fiscal year. The report must further indicate for each district the total number of special education students, and the number eligible for medicaid ~~((eligibility rate)),~~ as determined by the medical assistance administration. The superintendent may require a letter of explanation from any district whose ~~((receipts))~~ billings for medical assistance under the program, in the judgment of the superintendent, indicate nonparticipation or underparticipation.

NEW SECTION. **Sec. 5.** A new section is added to chapter 74.09 RCW to read as follows:

(1) Each district that has elected to act as its own billing agent under RCW 74.09.5247(2) and each firm that is a party to a preexisting contract under RCW 74.09.5247(1) shall, at times designated by the superintendent of public

instruction, provide the office of the superintendent of public instruction with a report indicating the total amount of medicaid and private insurance moneys billed by the district.

(2) The state billing agent shall, at times designated by the superintendent of public instruction, provide the superintendent of public instruction with a report for each district enrolled by the billing agent, indicating the total amount of medicaid and private insurance moneys billed through medicaid and private insurer billing.

NEW SECTION. Sec. 6. A new section is added to chapter 74.09 RCW to read as follows:

Of the projected federal medicaid and private insurance revenue collected under RCW 74.09.5249, twenty percent, after deduction for billing fees, shall be for incentive payments to districts. Incentive payments shall only be used by districts for children with disabilities.

NEW SECTION. Sec. 7. A new section is added to chapter 74.09 RCW to read as follows:

(1) Districts shall reassign medicaid payments to be received under RCW 74.09.5249 through 74.0.5253, sections 5 and 6 of this act, and this section to the superintendent of public instruction.

(2) The superintendent of public instruction shall receive medicaid payments from the department of social and health services for all state and federal moneys under Title XIX of the federal social security act due to districts for medical assistance provided in the district's special education program.

(3) The superintendent shall use reports from the department of social and health services, the state billing agent, districts acting as their own billing agent, and firms to calculate the appropriate amounts of incentive payments and state special education program moneys due each district.

(4) Moneys received by the superintendent of public instruction shall be disbursed for the following purposes:

(a) Reimbursement to the department of social and health services for the state-funded portion of medicaid payments;

(b) Reimbursement for billing agent's fees, including those of districts acting as their own agent and billing fees of firms;

(c) Incentive payments to school districts equal to twenty percent of the federal portion of medicaid payments after deduction for billing fees; and

(d) The remainder shall be distributed to districts as part of state allocations for the special education program provided under RCW 28A.150.390.

(5) With respect to private insurer funds received by districts, the superintendent of public instruction shall reduce state special education program allocations to the districts by eighty percent of the amount received, after deduction for billing fees.

Sec. 8. RCW 28A.150.390 and 1993 c 149 s 9 are each amended to read as follows:

The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for handicapped programs. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for handicapped programs and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260, federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and sections 5 through 7 of this act, and other state and local funds, excluding special excess levies. ~~((However, the superintendent of public instruction shall reimburse the department of social and health services from state appropriations for handicapped education programs for the state-funded portion of any medical assistance payment made by the department for services provided under an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. The amount of such interagency reimbursement shall be deducted by the superintendent of public instruction in determining additional allocations to districts for handicapped education programs under this section.))~~

NEW SECTION. Sec. 9. RCW 28A.155.150 and 1993 c 149 s 8 are each repealed.

NEW SECTION. Sec. 10. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

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.

Passed the House March 6, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 181

[Engrossed Substitute House Bill 2863]

JUMBO FERRY PROPULSION SYSTEM ACQUISITION

AN ACT Relating to the jumbo ferry vessel propulsion system; adding a new section to chapter 47.60 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 finds and declares that:

A 1991 legislative study, conducted by Booz.Allen, Hamilton and M. Rosenblatt and Son, examining the Washington State Ferries' management of its vessel refurbishment and construction program, resulted in recommendations for improvements and changes in the vessel refurbishment and construction program. These legislatively adopted recommendations encourage and support input by Washington State Ferries' engineers in the development of refurbishment and new construction project requirements.

The recommendations of the Booz.Allen study have been applied to the construction of the Jumbo Class Mark II ferries through the appointment of a Jumbo Class Mark II Steering Committee comprised of current state ferry engineers responsible for the design, operation, and maintenance of state ferry vessels.

The Steering Committee, in carrying out the recommendations of the Booz. Allen study, has determined that the procedure for the procurement of equipment, parts, and supplies for the Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778, must take into consideration, in addition to life-cycle cost criteria, criteria that are essential to the operation of a public mass transportation system responsive to the needs of Washington State Ferries' users, and that assess the reliability, maintainability, and performance of equipment, parts, and supplies to be installed in the Jumbo Mark II ferries.

The construction of the new Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778 is critical to the welfare of the state and any delay in the immediate construction of the ferries will result in severe hardship and economic loss to the state and its citizens. Recognizing these findings, it is the intent of the legislature that the vessel construction should not be delayed further because of the acquisition of a propulsion system, or any component of it, for the ferries, and to authorize the department of transportation to acquire all components of a complete propulsion system as soon as possible so that planned construction of the Jumbo Class Mark II ferry vessels can proceed immediately.

The purpose of this chapter is to authorize the use, by the department, of supplemental, alternative contracting procedures for the procurement of a propulsion system, and the components thereof, for the Jumbo Class Mark II ferries; and to prescribe appropriate requirements and criteria to ensure that contracting procedures for such procurement serve the public interest.

NEW SECTION. Sec. 2. A new section is added to chapter 47.60 RCW to read as follows:

(1) The department may enter into a contract for the acquisition of the propulsion system, or any component of it, including diesel engines and spare parts, for installation into one or more of the three Jumbo Class Mark II ferry vessels authorized under this chapter. This authorization does not limit the department from obtaining and installing the propulsion system, or any component of it, as incidental to the overall vessel construction contract authorized under RCW 47.60.770 through 47.60.778, nor from proceeding to

complete an existing contract for acquisition of the propulsion system or any component of it.

(2) Acquisition of a propulsion system, or any component of it, for the Jumbo Class Mark II ferries by the department under this section is exempt from chapter 43.19 RCW.

(3) Whenever the department decides to enter into an acquisition contract under this section it shall publish a notice of its intent to negotiate such a contract once a week for at least two consecutive weeks in one trade newspaper and one other newspaper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(a) The identity of the propulsion system or components to be acquired and the proposed delivery dates for the propulsion system or components;

(b) An address and telephone number that may be used to obtain the request for proposal.

(4) The department shall send to any firm that requests it, a request for proposal outlining the design and construction requirements for the propulsion system, including any desired components. The request for proposal must include, but is not limited to, the following information:

(a) The proposed delivery date for each propulsion system or desired component and the location where delivery will be taken;

(b) The form and formula for contract security;

(c) A copy of the proposed contract;

(d) The date by which proposals must be received by the department in order to be considered; and

(e) A statement that any proposal submitted constitutes an offer and must remain open until ninety days after the deadline for submitting proposals, together with an explanation of the requirement that all proposals submitted must be accompanied by a deposit in the amount of five percent of the proposed cost.

(5) The department shall evaluate all timely proposals received for: (a) Compliance with the requirements specified in the request for proposal; and (b) suitability of each firm's proposal by applying appropriate criteria to be developed by the department: (i) To assess the ability of the firm to expeditiously and satisfactorily perform and (ii) to accomplish an acquisition that is most advantageous to the department. A portion of the technical requirements addressed in the request for proposal shall include, but is not limited to, user verifications of manufacturer's reliability claims; the quality of engine maintenance documentation; and engine compatibility with ship design.

(6) The criteria to select the most advantageous diesel engine under subsection (5)(b)(ii) shall consist of life-cycle cost factors weighted at forty-five percent; and operational factors weighted as follows: reliability at twenty percent, maintainability at twenty percent, and engine performance at fifteen percent. For purposes of this subsection, the life-cycle cost factors shall consist of the costs for engine acquisition and warranty, spare parts acquisition and inventory, fuel efficiency and lubricating oil consumption, and commonality.

The fuel efficiency and lubricating oil consumption life-cycle cost factors shall receive not less than twenty percent of the total evaluation weighting and shall be evaluated under a format similar to that employed in the 1992 M.V. Tye engine replacement contract. The reliability factors shall consist of the length of service and reliability record in comparable uses, and mean time between overhauls. The mean time between overhauls evaluation shall be based upon the manufacturer's required hours between change of wear components. The maintainability factors shall consist of spare parts availability, the usual time anticipated to perform typical repair functions, and the quality of factory training programs for ferry system maintenance staff. The performance factors shall consist of load change responsiveness, and air quality of exhaust and engine room emissions.

(7) Upon concluding its evaluation, the department shall:

(a) Select the firm presenting the proposal most advantageous to the department, taking into consideration compliance with the requirements stated in the request for proposal, and the criteria developed by the department, and rank the remaining firms in order of preference, judging them by the same standards;
or

(b) Reject all proposals as not in compliance with the requirements contained in the request for proposals.

(8) The department shall immediately notify those firms that were not selected as the firm presenting the most advantageous proposal of the department's decision. The department's decision is conclusive unless an aggrieved firm appeals the decision to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear the appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department is arbitrary or capricious.

(9) Upon selecting the firm that has presented the most advantageous proposal and ranking the remaining firms in order of preference, the department shall:

(a) Negotiate a contract with the firm presenting the most advantageous proposal; or

(b) If a final agreement satisfactory to the department cannot be negotiated with the firm presenting the most advantageous proposal, the department may then negotiate with the firm ranked next highest in order of preference. If necessary, the department may repeat this procedure and negotiate with each firm in order of rank until the list of firms has been exhausted.

(10) Proposals submitted by firms under this section constitute an offer and must remain open for ninety days. When submitted, each proposal must be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in the amount equal to five percent of the amount of the proposed contract

price, and the department may not consider a proposal that has no deposit enclosed with it. If the department awards a contract to a firm under the procedure set forth in this section and the firm fails to enter into the contract and furnish the required contract security within twenty days, exclusive of the day of the award, its deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a contract all proposal deposits shall be returned.

NEW SECTION. Sec. 3. The department of transportation, the department of general administration, and the office of financial management, in consultation with the legislative transportation committee, shall conduct a systematic review of acquisition authorities established under chapters 43.19, 47.56, and 47.60 RCW, and the consequent impact on the operation of Washington state ferries as a public mass transportation system. The results of this review, including any proposed legislation, shall be reported to the governor and the house of representatives and senate transportation committees on or before January 1, 1995.

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 House March 5, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 30, 1994.

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CHAPTER 182

[Substitute House Bill 2865]

PUBLIC DISCLOSURE--EXEMPTIONS--LOCAL ECONOMIC DEVELOPMENT PROGRAMS AND CLEAN WASHINGTON CENTER APPLICATIONS

AN ACT Relating to disclosure of information in local government economic development programs; reenacting and amending RCW 42.17.310; and providing an effective date.

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

Sec. 1. RCW 42.17.310 and 1993 c 360 s 2, 1993 c 320 s 9, and 1993 c 280 s 35 are each reenacted and amended to read as follows:

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

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

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

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons

would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

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

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

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

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

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

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

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

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

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

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

through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

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

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

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

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

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

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

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

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the

department shall automatically be withheld from public inspection and copying if the provider has provided the department with an accurate alternative or business address and telephone number.

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

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

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Business related information protected from public inspection and copying under RCW 15.86.110.

(ff) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

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

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

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

NEW SECTION. Sec. 2. This act shall take effect July 1, 1994.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 183

[House Bill 2909]

STATE HIGHWAY BONDS

AN ACT Relating to state highway bonds; and adding new sections to chapter 47.10 RCW. Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares:

Successful implementation of the public-private transportation initiatives program authorized in chapter 47.46 RCW may require the financial participation of the state in projects authorized in that chapter.

The participation may take the form of loans, loan guarantees, user charge guarantees, or such other cash contribution arrangements as may improve the ability of the private entities sponsoring the projects to obtain financing.

It is in the best interests of the people of the state that state funding of possible financial participation in the projects authorized under chapter 47.46 RCW be in the form long-term bonds.

NEW SECTION. Sec. 2. In order to provide funds necessary to implement the public-private transportation initiatives authorized by chapter 47.46 RCW, there shall be issued and sold upon the request of the Washington state transportation commission a total of twenty-five million dollars of general obligation bonds of the state of Washington.

NEW SECTION. Sec. 3. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by sections 2 through 9 of this act in accordance with chapter 39.42 RCW. Bonds authorized by sections 2 through 9 of this act shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. In making such appropriation of the net proceeds of the sale of the bonds, the legislature shall specify what portion of the appropriation is provided for possible loans and what portion of the appropriation is provided for other forms of cash contributions to projects.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

NEW SECTION. Sec. 4. (1) The proceeds from the sale of bonds authorized by sections 2 through 9 of this act that are in support of possible loans as specified under section 3 of this act shall be deposited into the transportation revolving loan account, hereby created, in the transportation fund. The proceeds shall be available only for the purposes of making loans to entities authorized to undertake projects selected under chapter 47.46 RCW as enumerated in section 3 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(2) The proceeds from the sale of bonds authorized by sections 2 through 9 of this act that are in support of all forms of cash contributions to projects selected under chapter 47.46 RCW except loans shall be deposited into the transportation fund. The proceeds shall be available only for the purposes of making any contributions except loans to projects selected under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

NEW SECTION. Sec. 5. Principal and interest payments made on loans from the transportation loan revolving account as authorized by chapter 47.46 RCW shall be deposited into the transportation loan revolving account and shall be available for the payment of principal and interest on bonds authorized by sections 2 through 9 of this act and for such other purposes as may be specified by law.

NEW SECTION. Sec. 6. (1) Bonds issued under the authority of sections 2 through 9 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due.

(2) The principal and interest on the bonds issued for the purposes enumerated in section 4 of this act shall be first payable in the manner provided in sections 2 through 9 of this act from the proceeds of the state excise tax on motor vehicles imposed by RCW 82.44.020(2). Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of sections 2 through 9 of this act, and the legislature agrees to continue to impose this excise tax on motor vehicles in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of sections 2 through 9 of this act.

NEW SECTION. Sec. 7. (1) Both principal and interest on the bonds issued for the purposes of sections 2 through 9 of this act are payable from the

highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest.

(2) The state finance committee shall, on or before June 30th of each year certify to the state treasurer the amount required for principal and interest on the bonds issued for the purposes specified in section 4 of this act in accordance with the bond proceedings. The state treasurer shall withdraw from the transportation fund and deposit into the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

(3) Any funds required for bond retirement or interest on the bonds authorized by sections 2 through 9 of this act shall be taken from that portion of the transportation fund that results from the imposition of excise taxes on motor vehicles which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle excise tax revenues to the state, counties, cities, towns, and transit agencies unless the amount arising from excise taxes on motor vehicles distributed to the state in the transportation fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

(4) Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle excise taxes that are distributable to the state, counties, cities, towns, and transit agencies shall be repaid from the first revenues from the motor vehicle excise taxes distributed to the transportation fund not required for bond retirement or interest on the bonds.

NEW SECTION. Sec. 8. Whenever, under section 7(2) of this act, the state treasurer transfers funds from the transportation fund to the highway bond retirement fund, or a special account in the fund, the state treasurer shall at the same time reimburse the transportation fund in an identical amount from the transportation loan revolving account. The reimbursements may be made only to the extent funds from the repayment of principal and interest on loans made from the transportation loan revolving fund are available.

NEW SECTION. Sec. 9. Bonds issued under the authority of sections 2 through 8 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle excise taxes for the payment of principal and interest thereon are an equal charge against the revenues from the motor vehicle excise taxes.

NEW SECTION. Sec. 10. Sections 2 through 9 of this act are each added to chapter 47.10 RCW.

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.

Passed the House February 11, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 184

[Engrossed Senate Bill 6601]

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY

AN ACT Relating to government performance and accountability; amending RCW 43.88.020 and 43.88.090; reenacting and amending RCW 43.88.160; adding a new chapter to Title 43 RCW; creating a new section; repealing 1993 c 406 s 1 (uncodified); and declaring an emergency.

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

NEW SECTION. Sec. 1. STATEMENT OF PURPOSE. The state of Washington expects to be the most effective and best performing state government in the United States, measured in terms of quality of customer service, accountability for cost-effective services, and productivity.

NEW SECTION. Sec. 2. STATEMENT OF INTENT. It is the intent of the governor and the legislature to accomplish the purpose of section 1 of this act through a commitment to continuous improvement of Washington state government and not through a one-time or short-term effort that would largely serve to redefine problems rather than identify solutions.

The governor, the legislature, and the public expect Washington state government to focus on the citizens of Washington as valued customers of state government. State government will accomplish what its citizens truly expect of it, and operate as its customers expect.

Washington state government will be a government where state employees are recognized as our most valuable improvement resource in solving problems and delivering quality services, where employees play the most significant role in developing and implementing strategies to accomplish the purposes of this chapter, and where people want to work and are proud to serve. Washington state government will place a high priority on investment in its employees and the systems necessary to support those people.

We will have a state government where, with due regard for the different responsibilities assumed under the constitutional separation of powers, the governor and the legislature operate in partnership to improve the whole of state government, including themselves and their processes; where the governor and legislature act in partnership with state employees and employee organizations; and where all government officials and employees act in partnership with the citizens of Washington, who are the customers for state government.

Washington state government will have clear measures of performance that will result in quality customer service, accountability for cost-effective services, and improved productivity. Quality and performance standards will improve service delivery from all suppliers of government services.

NEW SECTION. Sec. 3. PERFORMANCE PARTNERSHIP COUNCIL—ESTABLISHED—POWERS AND DUTIES. (1) The Washington performance partnership council is established. The council shall consist of:

- (a) The governor;
- (b) The majority leader of the senate;
- (c) The speaker of the house of representatives;
- (d) The minority leader of the senate;
- (e) The minority leader of the house of representatives; and
- (f) Two state-wide elected officials to be appointed by the governor.

(2) To the extent necessary to accomplish the purposes of this chapter, the council shall meet monthly. The council shall invite the chairs and ranking minority members of the senate committee on ways and means and the house of representatives committee on appropriations to attend and participate in the meetings of the council as necessary and appropriate. The council may also invite the chairs of other legislative committees to participate in meetings of the council.

(3) The governor, majority leader of the senate, and speaker of the house of representatives shall serve as cochairs of the council.

(4) The council shall work in partnership to assure that the purposes and intent of this chapter are being met. The council shall establish clear expectations and measures of performance regarding implementation of the purpose and intent of this chapter. The council has decision-making authority to authorize programs to accomplish the purposes of this chapter. The council will review recommendations from the operating committee established under section 4 of this act and make appropriate recommendations regarding statutory changes to the legislature.

(5) The council shall have the authority and responsibility to provide adequate resources to accomplish the objectives of this chapter, including the hiring of staff or the reassignment of existing staff. Decisions to reallocate existing staff from any agency shall be made only with the approval of the director of the agency.

(6) Within forty-five days of the effective date of this act, the council will appoint a full-time person to coordinate and facilitate the effort.

NEW SECTION. Sec. 4. PERFORMANCE PARTNERSHIP OPERATING COMMITTEE—ESTABLISHED—POWERS AND DUTIES. (1) Within thirty days of the effective date of this act, the performance partnership council shall appoint the performance partnership operating committee, with no more than twelve members, comprised of:

- (a) The director of financial management;
- (b) Directors of state agencies, including independent agencies and agencies that report directly to the governor;
- (c) State employees and representatives of state employees;
- (d) Representatives of the legislature; and

(e) Representatives of the private sector with expertise in organizational improvement strategies.

(2) Representatives of the private sector shall be appointed in equal number to representatives of the public sector. The director of financial management and a representative of the private sector, to be selected by the council, shall serve as cochair of the operating committee.

(3) The operating committee shall focus on the day-to-day operations of the improvement process and the allocation of necessary staff resources. The committee shall assure the planning, initiation, and implementation of the functions necessary to accomplish the purposes of this chapter, monitor assigned tasks, and consider and recommend short- and long-term improvement strategies to the performance partnership council.

(4) The operating committee shall ensure that the strategies and recommendations to accomplish the purposes of this chapter are developed primarily by front-line state employees and the customers of state government services. That assurance will be provided, in part, by facilitating work teams and design teams comprised of state employees, state employee organizations, customers, managers, legislators or legislative employees, and experts from outside government to develop the strategies and accomplish the tasks required under sections 5, 6, and 7 of this act.

(5) Within sixty days of the effective date of this act, the operating committee shall recommend to the council a work plan and budget to accomplish the purposes of this chapter, with particular detail regarding the first twelve months. The operating committee shall also develop a thorough and effective internal and external communication plan necessary to inform and activate the participants essential to the success of the effort.

NEW SECTION. Sec. 5. STATEMENT OF STRATEGIC INTENT. Working through the operating committee, the performance partnership council shall initiate a two-tracked process toward the long-term improvement of state government.

The first area of effort shall focus on clarifying and stating the strategic intent for Washington state government: What Washington state government should be doing at this current period in time. Included in the strategic intent for state government shall be a clear statement of general goals for the state of Washington, the basic services that Washington state citizens desire, and the priorities and values which are centered on the customers of state government. The statement of intent, priorities, and values shall be developed within the context of revenue and expenditure limitations.

The council shall establish a process which effectively involves the customers and suppliers of state government services. The suppliers are primarily state employees, but might also include local government, private vendors of goods and services, and others as appropriate. The process shall be ongoing. The council shall prepare its initial statement of strategic intent for Washington state government by September 1, 1994, for recommendation to the

1995 legislature. The legislature shall either accept or reject, but cannot amend, the statement of strategic intent. The legislature shall take action on the initial recommendation by March 15, 1995. If the statement of strategic intent is not approved by the legislature, it shall be amended by the council and resubmitted.

The council shall recommend to the legislature an updated statement of strategic intent by September 1 of each even-numbered year for action by the legislature by March 15 in the following legislative session.

NEW SECTION. Sec. 6. IMPROVEMENT OF GOVERNMENT SERVICES—DESIGN TEAMS—INITIAL PROJECTS. (1) The second area of effort by the performance partnership council shall focus on continuous improvement of state government services by developing successful strategies to:

(a) Clearly identify the intended result of each state government service or program, and measure and communicate performance toward the intended result;

(b) Assess each activity and function of government to identify the value added toward the general strategic intent of state government and the specific result intended from the program or service, eliminate or redesign activities so that each function or activity makes a cost-effective contribution toward intended results, and design organizations that match the functions and processes of state government;

(c) Redesign the internal systems that support state government to be more consistent with a priority-driven, results-oriented, performance-based system of government, with highest priority to redesign of the budget system and the accounting system; and

(d) Identify and remove barriers to performance and create incentives for better performance and cost-effectiveness.

(2) The operating committee shall formulate design teams consisting of front-line employees, employee representatives, managers, customers, outside experts where appropriate, legislators or legislative staff, representatives of local government, vendors and other suppliers of state services, and any other persons deemed necessary or appropriate by the operating committee, to develop successful prototypes with application throughout the executive and legislative branches of government for implementation of the improvement principles described in subsection (1) of this section. The composition of the design teams shall be flexible and shall reflect the expertise required for the initial projects.

(3) Initial projects shall be undertaken to design strategies for successful implementation of each of the principles described in subsection (1) of this section and any others identified by the council as being essential to accomplish the purposes of this chapter. In developing successful strategies, the design teams shall also examine the best practices used in the public and private sectors to accomplish the objectives of subsection (1) of this section. The initial projects shall be designed to demonstrate definitive results, including effective methods for employee participation and empowerment techniques to facilitate and implement creative problem solving from all employees, effective means of customer involvement, consistent definitions and instructions, effective training

plans and identification of resources required, successful project management strategies, and effective communication plans.

(4) The work plan described in section 4 of this act shall identify the initial projects to be undertaken. The initial projects shall be designed to develop effective performance improvement strategies that can be replicated in other areas of state government. Initial projects should be identified in an effort to demonstrate early success and immediate improvement in state government performance. It is not necessary at the outset to initiate projects for each of the principal government improvement strategies described in subsection (1) of this section. Rather, the work plan should describe an orderly schedule that will allow for integration of each of the initial projects in a way that will result in coordinated strategies for continuous improvement. The initial projects for improvement should be consistent with efforts to define the strategic intent for Washington state government.

(5) The council shall determine when an initiative has resulted in successful strategies that should be expanded to a broader portion, or the whole, of state government. The council shall recommend statutory changes to the legislature when such changes are required to accomplish the purposes of this chapter. The council shall also develop legislation to alter statutes, rules, and regulations necessary for initial agencies and programs to accomplish the purposes of this chapter, and to expand projects to a broader portion of state government at the appropriate time. The legislation shall be based on the work of project teams designed to identify and address barriers to performance and create incentives.

(6) The performance partnership council and operating committee shall ensure the work of the design teams is supported by committed leadership that provides clear vision and motivation and facilitates effective communication. State employees shall be recognized and supported as the single resource most effective in identifying and solving problems and delivering effective state government services. Employees shall be well supported by the provision of necessary resources, particularly an investment in employee training, and shall be provided with the flexibility and incentives necessary to successfully implement their assigned tasks. The ultimate goal of the design teams shall be to develop strategies to improve state government in regard to the customers' expectations for quality services delivered in the most cost-effective means possible.

NEW SECTION. Sec. 7. BUDGET PROCESS—PERFORMANCE MEASUREMENT. The current operating budget process for state government has been generally based on the presumption of continuing current service levels and giving careful consideration only to marginal changes. It is not well understood or supported by the public or state government policymakers. Consequently, work on initial projects for performance measurement and budget redesign must progress sufficiently to result in expansion to additional programs for the 1995-1997 biennium. Beginning no later than the 1997-1999 biennium, the state operating budget and the process used to develop that budget shall, to

the fullest extent possible and based on the recommendations of the council, be redesigned to reflect an effective state-wide system of performance measurement, shall be based on a clear statement of state-wide priorities (strategic intent) as well as clear priorities within each agency, and shall incorporate incentives for performance and cost-effectiveness.

NEW SECTION. Sec. 8. COLLECTIVE BARGAINING AGREEMENTS. Nothing in this chapter shall supersede or modify in any manner the provisions of any public employee collective bargaining agreement under Title 41 RCW, or any rights established thereunder.

Sec. 9. RCW 43.88.020 and 1993 c 406 s 2 are each amended to read as follows:

(1) "Budget" means a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

(2) "Budget document" means a formal, written statement offered by the governor to the legislature, as provided in RCW 43.88.030.

(3) "Director of financial management" means the official appointed by the governor to serve at the governor's pleasure and to whom the governor may delegate necessary authority to carry out the governor's duties as provided in this chapter. The director of financial management shall be head of the office of financial management which shall be in the office of the governor.

(4) "Agency" means and includes every state office, officer, each institution, whether educational, correctional or other, and every department, division, board and commission, except as otherwise provided in this chapter.

(5) "Public funds", for purposes of this chapter, means all moneys, including cash, checks, bills, notes, drafts, stocks, and bonds, whether held in trust, for operating purposes, or for capital purposes, and collected or disbursed under law, whether or not such funds are otherwise subject to legislative appropriation, including funds maintained outside the state treasury.

(6) "Regulations" means the policies, standards, and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the governor or the governor's designated agent, and which shall have the force and effect of law.

(7) "Ensuing biennium" means the fiscal biennium beginning on July 1st of the same year in which a regular session of the legislature is held during an odd-numbered year pursuant to Article II, section 12 of the Constitution and which biennium next succeeds the current biennium.

(8) "Dedicated fund" means a fund in the state treasury, or a separate account or fund in the general fund in the state treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose; but "dedicated fund" does not include a revolving fund or a trust fund.

(9) "Revolving fund" means a fund in the state treasury, established by law, from which is paid the cost of goods or services furnished to or by a state

agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds.

(10) "Trust fund" means a fund in the state treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes.

(11) "Administrative expenses" means expenditures for: (a) Salaries, wages, and related costs of personnel and (b) operations and maintenance including but not limited to costs of supplies, materials, services, and equipment.

(12) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(13) "Lapse" means the termination of authority to expend an appropriation.

(14) "Legislative fiscal committees" means the legislative budget committee, the legislative evaluation and accountability program committee, the ways and means committees of the senate and house of representatives, and, where appropriate, the legislative transportation committee.

(15) "Fiscal period" means the period for which an appropriation is made as specified within the act making the appropriation.

(16) "Primary budget driver" means the primary determinant of a budget level, other than a price variable, which causes or is associated with the major expenditure of an agency or budget unit within an agency, such as a caseload, enrollment, workload, or population statistic.

(17) "Stabilization account" means the budget stabilization account created under RCW 43.88.525 as an account in the general fund of the state treasury.

(18) "State tax revenue limit" means the limitation created by chapter 43.135 RCW.

(19) "General state revenues" means the revenues defined by Article VIII, section 1(c) of the state Constitution.

(20) "Annual growth rate in real personal income" means the estimated percentage growth in personal income for the state during the current fiscal year, expressed in constant value dollars, as published by the office of financial management or its successor agency.

(21) "Estimated revenues" means estimates of revenue in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast including estimates of revenues to support financial plans under RCW 44.40.070, that are prepared by the office of financial management in consultation with the interagency task force.

(22) "Estimated receipts" means the estimated receipt of cash in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts,

and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(23) "State budgeting, accounting, and reporting system" means a system that gathers, maintains, and communicates fiscal information. The system links fiscal information beginning with development of agency budget requests through adoption of legislative appropriations to tracking actual receipts and expenditures against approved plans.

(24) "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.

(25) "Statement of proposed expenditures" means a plan prepared by each agency that breaks each appropriation out into monthly detail representing the best estimate of how the appropriation will be expended.

(26) "Undesignated fund balance (or deficit)" means unreserved and undesignated current assets or other resources available for expenditure over and above any current liabilities which are expected to be incurred by the close of the fiscal period.

(27) "Internal audit" means an independent appraisal activity within an agency for the review of operations as a service to management, including a systematic examination of accounting and fiscal controls to assure that human and material resources are guarded against waste, loss, or misuse; and that reliable data are gathered, maintained, and fairly disclosed in a written report of the audit findings.

(28) "Performance ((audit) verification)" means an ~~((audit that determines the following: (a) Whether a government entity is acquiring, protecting, and using its resources economically and efficiently; (b) the causes of inefficiencies or uneconomical practices; (c) whether the entity has complied with laws and rules applicable to the program; (d) the extent to which the desired results or benefits established by the legislature are being achieved; and (e) the effectiveness of organizations, programs, activities, or functions))~~ analysis that (a) verifies the accuracy of data used by state agencies in quantifying intended results and measuring performance toward those results, and (b) verifies whether or not the reported results were achieved.

(29) "Program evaluation" means the use of a variety of policy and fiscal research methods to (a) determine the extent to which a program is achieving its legislative intent in terms of producing the effects expected, and (b) make an objective judgment of the implementation, outcomes, and net cost or benefit impact of programs in the context of their goals and objectives. It includes the application of systematic methods to measure the results, intended or unintended, of program activities.

Sec. 10. RCW 43.88.090 and 1993 c 406 s 3 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 chapter 41.45 RCW. 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.

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.

~~(2) (It is the policy of the state that each state agency define its mission and establish measurable goals for achieving desirable results for those who receive its services. This section shall not be construed to require an agency to develop a new mission or goals in place of identifiable missions or goals that meet the intent of this section. State agencies should involve affected groups and individuals in developing their missions and goals.~~

~~(3) For the purpose of assessing program performance, each state agency shall establish program objectives for each major program in its budget. The objectives shall be consistent with the missions and goals developed under this section. The objectives shall be expressed to the extent practicable in outcome-based, objective, and measurable form unless permitted by the office of financial management to adopt a different standard.~~

~~(4) In concert with legislative and executive agencies, the office of financial management shall develop a plan for using these outcome-based objectives in the evaluation of agency performance for improved accountability of state government. Any elements of the plan requiring legislation shall be submitted to the legislature no later than November 30, 1994.~~

(5)) 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. 11. RCW 43.88.160 and 1993 c 500 s 7, 1993 c 406 s 4, and 1993 c 194 s 6 are each reenacted and amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) The director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated

start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehensiveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(c) Establish policies for allowing the contracting of child care services;

(d) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(e) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter said plans, except that for the following agencies no amendment or alteration of said plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(f) Fix the number and classes of positions or authorized man years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix said number or said classes for the following: Agencies headed by elective officials;

(g) Provide for transfers and repayments between the budget stabilization account and the general fund as directed by appropriation and RCW 43.88.525 through 43.88.540;

(h) Adopt rules to effectuate provisions contained in (a) through (g) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Receive, disburse, or transfer public funds under the treasurer's supervision or custody;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Coordinate agencies' acceptance and use of credit cards and other payment methods, if the agencies have received authorization under RCW 43.41.180;

(e) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to disburse public funds in the treasury except upon forms or by alternative means duly prescribed by the director of financial management. These forms or alternative means shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect and copies thereof are on file with the office of financial management; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made. When services are lawfully paid for in advance of full performance by any private individual or business entity other than as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services. No payments shall be made in advance for any equipment maintenance services to be performed more than three months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance

funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official or employee charged with the receipt, custody or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include determinations as to whether agencies, in making expenditures, complied with the laws of this state. The state auditor is authorized to perform or participate in performance ~~((audits))~~ verifications only as expressly authorized by the legislature in the omnibus biennial appropriations acts. ~~((A performance audit for the purpose of this section is the examination of the effectiveness of the administration, its efficiency, and its adequacy in terms of the programs of departments or agencies as previously approved by the legislature.))~~ The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW or a performance verification, may report to the legislative budget committee or other appropriate committees of the legislature, in a manner prescribed by the legislative budget committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit or performance verification. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken promptly, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

(7) The legislative budget committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in RCW 44.28.085 as well as performance audits and program evaluations. To this end the committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs and generally for an improved level of fiscal management.

NEW SECTION. Sec. 12. 1993 c 406 s 1 (uncodified) is repealed.

NEW SECTION. Sec. 13. Captions as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 14. Sections 1 through 8 of this act shall constitute a new chapter in Title 43 RCW.

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 March 7, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 185

[Engrossed Senate Bill 5449]

COURT JUDGMENTS—PROVISIONS REVISED

AN ACT Relating to judgments; amending RCW 4.56.100, 4.64.030, 6.21.110, 36.48.090, 7.40.080, 6.36.025, 6.36.035, and 6.36.045; and adding a new section to chapter 36.18 RCW.

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

Sec. 1. RCW 4.56.100 and 1983 c 28 s 1 are each amended to read as follows:

(1) When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution, or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his attorney of record in such action or his assignee acknowledged as deeds are acknowledged. Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is full or partial, the cause number, and the date of entry of the judgment. A certificate by such clerk of the entry of such satisfaction by him may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged.

(2) The department of social and health services shall file a satisfaction of judgment for welfare fraud conviction if a person does not pay money through the clerk as required under subsection (1) of this section.

(3) The department of corrections shall file a satisfaction of judgment if a person does not pay money through the clerk's office as required under subsection (1) of this section.

Sec. 2. RCW 4.64.030 and 1987 c 442 s 1107 are each amended to read as follows:

The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

On the first page of each judgment which provides for the payment of money, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment. If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. This information is included in the judgment to assist the county clerk in his or her record-keeping function. The clerk may not sign or file a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.

Sec. 3. RCW 6.21.110 and 1987 c 442 s 611 are each amended to read as follows:

(1) Upon the return of any sale of real estate, the clerk: (a) Shall enter the cause, on which the execution or order of sale issued, by its title, on the motion

docket, and mark opposite the same: "Sale of land for confirmation"; (b) shall mail notice of the filing of the return of sale to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them; (c) shall file proof of such mailing in the action; (d) shall apply the proceeds of the sale returned by the sheriff, or so much thereof as may be necessary, to satisfaction of the judgment, including interest as provided in the judgment, and shall pay any excess proceeds as provided in subsection (5) of this section by direction of court order; and (e) upon confirmation of the sale, shall deliver the original certificate of sale to the purchaser.

(2) The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them, unless the judgment debtor, or in case of the judgment debtor's death, the representative, or any nondefaulting party to whom notice was sent shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.

(3) If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date.

(4) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. If on resale the property sells for a greater amount to any person other than the former purchaser, the clerk shall first repay to the former purchaser out of the proceeds of the resale the amount of the former purchaser's bid together with interest as is provided in the judgment.

(5) If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or the judgment debtor's representative, as the case may be, before the order is made upon the motion to confirm the sale only if the party files with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; otherwise the excess proceeds shall remain in the custody of the clerk until the sale of the property has been disposed of; but if the sale be confirmed, such excess proceeds shall be paid to the judgment debtor or representative as a matter of course.

(6) The purchaser shall file the original certificate of sale for record with the recording officer in the county in which the property is located.

Sec. 4. RCW 36.48.090 and 1987 c 363 s 4 are each amended to read as follows:

Whenever the clerk of the superior court has funds held in trust for any litigant or for any purpose, they shall be deposited in a separate fund designated "clerk's trust fund," and shall not be commingled with any public funds. However, in the case of child support payments, the clerk may send the checks or drafts directly to the recipient or endorse the instrument to the recipient and the clerk is not required to deposit such funds. In processing child support payments, the clerk shall comply with RCW 26.09.120. The clerk may invest the funds in any of the investments authorized by RCW 36.29.020. The clerk shall place the income from such investments in the county current expense fund to be used by the county for general county purposes unless: (1) The funds being held in trust in a particular matter are two thousand dollars or more, and (2) a litigant in the matter has filed a written request that such investment be made of the funds being held in trust (~~and the income be paid to the beneficiary~~). Interest income accrued from the date of filing of the written request for investment shall be paid to the beneficiary. In such an event, any income from such investment shall be paid to the beneficiary of such trust upon the termination thereof: PROVIDED, That five percent of the income shall be deducted by the clerk as an investment service fee and placed in the county current expense fund to be used by the county for general county purposes.

In any matter where funds are held in the clerk's trust fund, any litigant who is not represented by an attorney and who has appeared in matters where the funds held are two thousand dollars or more shall receive written notice of the provisions of this section from the clerk.

Sec. 5. RCW 7.40.080 and 1957 c 51 s 9 are each amended to read as follows:

No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify as provided by law, and until they so justify, the clerk shall be responsible for their sufficiency. The court in its sound discretion may waive the required bond in situations in which a person's health or life would be jeopardized.

Sec. 6. RCW 6.36.025 and 1977 ex.s. c 45 s 1 are each amended to read as follows:

(1) A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for

reopening, vacating, or staying as a judgment of a superior court of this state and may be enforced or satisfied in like manner.

(2) Alternatively, a copy of any foreign judgment (a) authenticated in accordance with the act of congress or the statutes of this state, and (b) within the civil jurisdiction and venue of the district court as provided in RCW 3.66.020, 3.66.030, and 3.66.040, may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state, and may be enforced or satisfied in like manner.

Sec. 7. RCW 6.36.035 and 1979 c 97 s 1 are each amended to read as follows:

(1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3)(a) No execution or other process for enforcement of a foreign judgment filed (~~hereunder~~) in the office of the clerk of a superior court shall issue until ten days after the date the judgment is filed, or until ten days after mailing the notice of filing, whether mailed by the clerk or judgment creditor, whichever is later.

(b) No execution or other process for enforcement of a foreign judgment filed in the office of the clerk of a district court shall issue until fourteen days after the date the judgment is filed, or until fourteen days after mailing the notice of filing, whether mailed by the clerk or judgment creditor, whichever is later.

Sec. 8. RCW 6.36.045 and 1977 ex.s. c 45 s 3 are each amended to read as follows:

(1)(a) If the judgment debtor shows the superior court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has

furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

~~((2))~~ (b) If the judgment debtor shows the superior court of any county any ground upon which enforcement of a judgment of a superior court of any county of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

(2)(a) If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of a district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

NEW SECTION. **Sec. 9.** A new section is added to chapter 36.18 RCW to read as follows:

Superior court clerks may contract with collection agencies or may use county collection services for the collection of unpaid court obligations. The costs for the agencies or county services shall be paid by the debtor. Collection may not be initiated with respect to a criminal offender who is under the supervision of the department of corrections without the prior agreement of the department.

Any contract with a collection agency shall be awarded only after competitive bidding. Factors that a court clerk shall consider in awarding a collection contract include but are not limited to: (1) A collection agency's history and reputation in the community; and (2) the agency's access to a local data base that may increase the efficiency of its collections.

The servicing of an unpaid court obligation does not constitute assignment of a debt, and no contract with a collection agency may remove the court's control over unpaid obligations owed to the court.

Passed the Senate March 9, 1994.

Passed the House March 9, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 186

[Substitute Senate Bill 5714]

VENDOR SINGLE INTEREST OR COLLATERAL PROTECTION COVERAGE

AN ACT Relating to vendor single-interest insurance coverage; adding new sections to chapter 48.22 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 1 through 5 and 7 of this act.

(1) "Borrower" means a person who receives a loan or enters into a retail installment contract under chapter 63.14 RCW to purchase a motor vehicle or vessel in which the secured party holds an interest.

(2) "Motor vehicle" means a motor vehicle in this state subject to registration under chapter 46.16 RCW, except motor vehicles governed by RCW 46.16.020 or registered with the Washington utilities and transportation commission as common or contract carriers.

(3) "Secured party" means a person, corporation, association, partnership, or venture that possesses a bona fide security interest in a motor vehicle or vessel.

(4) "Vendor single-interest" or "collateral protection coverage" means insurance coverage insuring primarily or solely the interest of a secured party but which may include the interest of the borrower in a motor vehicle or vessel serving as collateral and obtained by the secured party or its agent after the borrower has failed to obtain or maintain insurance coverage required by the financing agreement for the motor vehicle or vessel. Vendor single-interest or collateral protection coverage does not include insurance coverage purchased by a secured party for which the borrower is not charged.

(5) "Vessel" means a vessel as defined in RCW 88.02.010 and includes personal watercraft as defined in RCW 88.12.010.

NEW SECTION. Sec. 2. In a contract or loan agreement, or on a separate document accompanying the contract or loan agreement and signed by the borrower, that provides financing for a motor vehicle or vessel and authorizes a secured party to purchase vendor single interest or collateral protection coverage, the following or substantially similar warning must be set forth in ten-point print:

WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE

BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY WASHINGTON'S MANDATORY LIABILITY INSURANCE LAWS.

NEW SECTION. Sec. 3. (1) A secured party shall not impose charges, that may include but are not limited to interest, finance, and premium charges, on a borrower for vendor single interest or collateral protection coverage for the motor vehicle or vessel as provided in subsection (2) of this section until the following or a substantially similar warning printed in ten-point type is sent to the borrower:

FINAL NOTICE AND WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT WITHIN FIVE DAYS AFTER THE POSTMARK ON THIS LETTER, WE WILL PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE OR HAVE PAID OFF THE LOAN ON THE COLLATERAL IN ITS ENTIRETY.

YOU ARE RESPONSIBLE FOR THE COST OF THE INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE WILL COST YOU A TOTAL OF APPROXIMATELY \$. . . (PLUS INTEREST) AND MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN.

The final notice and warning shall identify whether the coverage to be purchased is vendor single interest or collateral protection coverage and disclose the extent of the borrower's coverage, if any, including a statement of whether the coverage satisfies Washington's mandatory liability insurance laws.

(2) If reasonable efforts to provide the borrower with the notice required under subsection (1) of this section fail to produce evidence of the required insurance, the secured party may proceed to impose charges for vendor single interest or collateral protection coverage no sooner than eight days after giving notice as required under this chapter. Reasonable efforts to provide notice under this section means:

(a) Within thirty days before the secured party is required to send the final notice and warning in compliance with subsection (1) of this section, the secured party shall mail a notice by first class mail to the borrower's last known address as contained in the secured party's records. The notice shall state that the secured party intends to charge the borrower for vendor single interest or collateral protection coverage on the collateral if the borrower fails to provide evidence of proper insurance to the lender; and

(b) The secured party shall send the final notice and warning notice in compliance with subsection (1) of this section by certified mail to the borrower's last known address as contained in the secured party's records at least eight days before the insurance is charged to the borrower by the insurer.

(3) The secured party is responsible for complying with subsection (2)(a) and (b) of this section. However, a secured party may seek the services of other entities to fulfill the requirements of subsection (2)(a) and (b) of this section.

(4) Nothing contained in this chapter, or a secured party's compliance with or failure to comply with this chapter, shall be construed to require the secured party to purchase vendor single interest or collateral protection coverage, and the secured party shall not be liable to the borrower or any third party as a result of its failure to purchase vendor single interest or collateral protection coverage.

(5) Substantial compliance by a secured party with sections 1 through 5 of this act constitutes a complete defense to any claim arising under the laws of this state challenging the secured party's placement of vendor single interest or collateral protection coverage.

(6) The effective date of vendor single interest or collateral protection coverage placed under this chapter shall be either the date that the borrower's prior coverage lapsed or the date that the borrower failed to provide proof of coverage on the vehicle or vessel as required under the contract or loan agreement. Premiums for vendor single interest or collateral protection coverage placed under this chapter shall be calculated on a basis that does not exceed the outstanding credit balance as of the effective date of the coverage even though

the coverage may limit liability to the outstanding balance, actual cash value, or cost of repair.

(7) If the secured party has purchased the contract or loan agreement relating to the motor vehicle or vessel from the seller of the motor vehicle or vessel under an agreement that the seller must repurchase the contract or loan agreement in the event of a default by the borrower, the secured party shall send a copy of the notice provided under subsection (2)(a) of this section by first class mail to the seller at the seller's last known address on file with the secured party when such notice is sent to the borrower under subsection (2)(a) of this section.

NEW SECTION. Sec. 4. (1) The secured party shall cancel vendor single interest or collateral protection coverage charged to the borrower effective the date of receipt of proper evidence from the borrower that the borrower has obtained insurance to protect the secured party's interest. Proper evidence includes an insurance binder that is no older than ninety days from the date of issuance and that contains physical damage coverage as provided in the borrower's loan agreement with respect to the motor vehicle or vessel.

(2) If the underlying loan or extension of credit for the underlying loan is satisfied, the secured party may not require the borrower to maintain vendor single interest or collateral protection coverage that has been purchased.

(3) The interest rate for financing the cost of vendor single interest or collateral protection coverage may not exceed the interest rate applied to the underlying loan obligation.

NEW SECTION. Sec. 5. If vendor single interest or collateral protection coverage is canceled or discontinued under section 4 (1) or (2) of this act, the amount of unearned premium must be refunded to the borrower. At the option of the secured party, this refund may take the form of a credit against the borrower's obligation to the secured party. If the refund is taken as a credit against the borrower's obligation to the secured party, the secured party shall provide the borrower with an itemized statement that indicates the amount of the credit and where the credit has been applied.

NEW SECTION. Sec. 6. Sections 1 through 5 and 7 of this act are added to chapter 48.22 RCW.

NEW SECTION. Sec. 7. The failure of a secured party prior to January 1, 1995, to provide notice as contemplated in this chapter, or otherwise to administer a vendor single interest or collateral protection coverage program in a manner similar to that required under this chapter, shall not be admissible in any court or arbitration proceeding or otherwise used to prove that a secured party's actions with respect to vendor single interest or collateral protection coverage or similar coverage were unlawful or otherwise improper. A secured party shall not be liable to the borrower or any other party for placing vendor single interest or collateral protection coverage in accordance with the terms of an otherwise legal loan or other written agreement with the borrower entered prior to January 1, 1995. The provisions of this section shall be applicable with

respect to actions pending or commenced on or after the effective date of this section.

NEW SECTION. Sec. 3. Sections 1 through 5 of this act take effect January 1, 1995.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 187

[Engrossed Senate Bill 5920]

UNEMPLOYMENT INSURANCE—PILOT PROJECT

AN ACT Relating to unemployment insurance deductions; creating new sections; making an appropriation; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The purpose of this act is to provide for a study which will review incentives that encourage workers receiving unemployment insurance benefits to seek employment opportunities and return to full-time employment with the result that the unemployment insurance trust fund is positively affected.

(2)(a) The employment security department shall undertake a pilot project to determine the effect of allowing unemployment insurance claimants to keep a greater portion of their weekly benefits when engaged in part-time or temporary employment, as provided in section 2 of this act. The department shall develop a plan to implement the project, including the number of participants and the criteria for participation in the project. The plan shall be reviewed and approved by the unemployment insurance advisory committee before the pilot is implemented.

(b) The department shall report to the appropriate committees of the legislature on the pilot project by December 31, 1996. The report shall include the impact on the unemployment insurance trust fund and on claimants participating in the project.

NEW SECTION. Sec. 2. For the purposes of the pilot project created under section 1 of this act, the following requirements for defining "unemployment" and level of unemployment insurance benefit deductions is as follows:

(1)(a) An individual shall be deemed to be "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-half times the individual's weekly benefit amount plus fifteen dollars. The commissioner shall prescribe regulations applicable to

unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(b) An individual shall be deemed not to be "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer; and

(2) If an eligible individual is available for work for less than a full week, he or she shall be paid his or her weekly benefit amount reduced by one-seventh of such amount for each day that he or she is unavailable for work. However, if he or she is unavailable for work for three days or more of a week, he or she shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her weekly benefit amount less sixty-six and two-thirds percent of that part of the remuneration, if any, payable to him or her with respect to such week which is in excess of fifteen dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

Sec. 3. RCW 50.24.014 and 1993 c 483 s 20 are each amended to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) For the first calendar quarter of 1994 only, ~~((this))~~ the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes described in section 1 of this act. Any surplus from contributions payable under this subsection (b) will be deposited in the unemployment compensation trust fund.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

NEW SECTION. Sec. 4. The sum of four hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from the unemployment insurance funds collected under RCW 50.24.014(1)(b) to the employment security department for the purposes of section 1 of this act.

NEW SECTION. Sec. 5. Sections 1 and 2 of this act shall expire July 1, 1997.

NEW SECTION. Sec. 6. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 188

[Engrossed Senate Bill 6044]

AMERICAN INDIANS—HIGHER EDUCATION RESIDENCY DETERMINATION

AN ACT Relating to residency of Native Americans for purposes of higher education tuition; amending RCW 28B.15.012; and adding a new section to chapter 28B.15 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.15 RCW to read as follows:

For the purposes of determining resident tuition rates, resident students shall include American Indian students who meet two conditions. First, for a period of one year immediately prior to enrollment at a state institution of higher education as defined in RCW 28B.10.016, the student must have been domiciled in one or a combination of the following states: Idaho; Montana; Oregon; or Washington. Second, the students must be members of one of the following

American Indian tribes whose traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the state of Washington:

- (1) Colville Confederated Tribes;
- (2) Confederated Tribes of the Chehalis Reservation;
- (3) Hoh Indian Tribe;
- (4) Jamestown S'Klallam Tribe;
- (5) Kalispel Tribe of Indians;
- (6) Lower Elwha Klallam Tribe;
- (7) Lummi Nation;
- (8) Makah Indian Tribe;
- (9) Muckleshoot Indian Tribe;
- (10) Nisqually Indian Tribe;
- (11) Nooksack Indian Tribe;
- (12) Port Gamble S'Klallam Community;
- (13) Puyallup Tribe of Indians;
- (14) Quileute Tribe;
- (15) Quinault Indian Nation;
- (16) Confederated Tribes of Salish Kootenai;
- (17) Sauk Suiattle Indian Nation;
- (18) Shoalwater Bay Indian Tribe;
- (19) Skokomish Indian Tribe;
- (20) Snoqualmie Tribe;
- (21) Spokane Tribe of Indians;
- (22) Squaxin Island Tribe;
- (23) Stillaguamish Tribe;
- (24) Suquamish Tribe of the Port Madison Reservation;
- (25) Swinomish Indian Community;
- (26) Tulalip Tribes;
- (27) Upper Skagit Indian Tribe;
- (28) Yakama Indian Nation;
- (29) Coeur d'Alene Tribe;
- (30) Confederated Tribes of the Umatilla Indian Reservation;
- (31) Confederated Tribes of Warm Springs;
- (32) Kootenai Tribe; and
- (33) Nez Perce Tribe.

Any student enrolled at a state institution of higher education as defined in RCW 28B.10.016 who is paying resident tuition under this section, and who has not established domicile in the state of Washington at least one year before enrollment, shall not be included in any calculation of state-funded enrollment for budgeting purposes, and no state general fund moneys shall be appropriated to a state institution of higher education for the support of such student.

Sec. 2. RCW 28B.15.012 and 1993 sp.s. c 18 s 4 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean: (a) A financially independent student who has had a domicile in the state of Washington for the 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 and has in fact established a bona fide domicile in this state primarily for purposes other than educational; (b) a dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution; (c) a student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous; (d) any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year; ~~((e))~~ (e) a student who is the spouse or a dependent of a person who is on active military duty stationed in the state; or (f) a student who meets the requirements of section 1 of this act: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. A nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 189

[Substitute Senate Bill 6045]

JUDGMENTS—COLLECTION PERIOD EXTENSION AUTHORIZED

AN ACT Relating to execution of judgments; amending RCW 6.17.020, 4.16.020, 6.32.010, and 6.32.015; and reenacting and amending RCW 4.56.190.

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

Sec. 1. RCW 6.17.020 and 1989 c 360 s 3 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.

(2) After ~~((the effective date of this act))~~ July 23, 1989, a party who obtains a judgment or order of a court of record of any state, or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, may have an execution issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After the effective date of this act, a party in whose favor a judgment has been rendered pursuant to subsection (1) of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the

court. When application is made to the court to grant an additional ten years, the application shall be accompanied by a current and updated judgment summary as outlined in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost.

Sec. 2. RCW 4.16.020 and 1989 c 360 s 1 are each amended to read as follows:

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the ten-year period is extended in accordance with RCW 6.17.020(3).

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after ~~((the effective date of this act))~~ July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after ~~((the effective date of this act))~~ July 23, 1989.

Sec. 3. RCW 4.56.190 and 1987 c 442 s 1103 and 1987 c 202 s 116 are each reenacted and amended to read as follows:

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3). As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

Sec. 4. RCW 6.32.010 and 1985 c 215 s 1 are each amended to read as follows:

At any time within ten years after entry of a judgment for the sum of twenty-five dollars or over, unless the time is extended in accordance with RCW 6.17.020(3), upon application by the judgment creditor((?)) such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by ~~((him))~~ the judge, to answer concerning the same; and the judge to whom application is made under this chapter may, if it is made to appear to him or her by the affidavit of the judgment creditor, his or her agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him or her before the judge granting the order. Upon being brought before the judge, he or she may be ordered to enter into a bond, with sufficient sureties, that he or she will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof. If the judgment debtor or other persons against whom the special proceedings are instituted has been served with these proceedings, the plaintiff shall be entitled to costs of service, notary fees, and an appearance fee of twenty-five dollars. If the judgment debtor or other persons fail to answer or appear, the plaintiff shall additionally be entitled to reasonable attorney fees. If a plaintiff institutes special proceedings and fails to appear, a judgment debtor or other person against whom the proceeding was instituted who appears is entitled to an appearance fee of twenty-five dollars and reasonable attorney fees.

Sec. 5. RCW 6.32.015 and 1980 c 105 s 6 are each amended to read as follows:

At any time within ten years((?)) after entry of a judgment for a sum of twenty-five dollars or over, unless the time is extended in accordance with RCW 6.17.020(3), upon application by the judgment creditor((?)) such court or judge may, by order served on the judgment debtor, require such debtor to answer written interrogatories, under oath, in such form as may be approved by the court. No such creditor shall be required to proceed under this section nor shall he or she waive his or her rights to proceed under RCW 6.32.010 by proceeding under this section.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 190

[Engrossed Senate Bill 6057]

ALIEN FIREARM LICENSE

AN ACT Relating to aliens carrying firearms; amending RCW 9.41.170 and 9.41.070; and prescribing penalties.

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

Sec. 1. RCW 9.41.170 and 1979 c 158 s 3 are each amended to read as follows:

~~((It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shotgun, rifle, or other firearm, without first having obtained a license from the director of licensing, and such license is not to be issued by the director of licensing except upon the certificate of the consul domiciled in the state and representing the country of such alien, that he is a responsible person and upon the payment for the license of the sum of fifteen dollars: PROVIDED, That))~~ (1) It is a class C felony for any person who is not a citizen of the United States to carry or possess any firearm, without first having obtained an alien firearm license from the director of licensing. Except as provided in subsection (2) of this section, the director of licensing may issue an alien firearm license only upon receiving from the consul domiciled in this state representing the country of the alien, a certified copy of the alien's criminal history in the alien's country indicating the alien is not ineligible under RCW 9.41.040 to own, possess, or control a firearm, and the consul's attestation that the alien is a responsible person.

(2)(a) Subject to the additional requirements of (b) of this subsection, the director of licensing may issue an alien firearm license without a certified copy of the alien's criminal history or the consul's attestation required by subsection (1) of this section, if the alien has been a resident of this state for at least two years and: (i) The alien is from a country without a consul domiciled within this state, or (ii) the consul has failed to provide, within ninety days after a request by the alien, the criminal history or attestation required by subsection (1) of this section.

(b) Before issuing an alien firearm license under this subsection (2), the director of licensing shall ask the local law enforcement agency of the jurisdiction in which the alien resides to complete a background check to determine the alien's eligibility under RCW 9.41.040 to own, possess, or control a firearm. The law enforcement agency shall complete a background check within thirty days after the request, unless the alien does not have a valid Washington driver's license or Washington state identification card. In the latter case, the law enforcement agency shall complete the background check within sixty days after the request.

A signed application for an alien firearm license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for an alien firearm license to an inquiring law enforcement agency.

(3) The fee for an alien firearm license shall be twenty-five dollars, and the license shall be valid for four years from the date of issue.

(4) This section shall not apply to Canadian citizens resident in a province which has an enactment or public policy providing substantially similar privilege

to residents of the state of Washington and who are carrying or possessing weapons for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used (~~as to weapons used in such contest~~). Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. (~~Any person violating the provisions of this section shall be guilty of a misdemeanor.~~)

Sec. 2. RCW 9.41.070 and 1992 c 168 s 1 are each amended to read as follows:

(1) The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his or her person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. Such applicant's constitutional right to bear arms shall not be denied, unless he or she:

- (a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or
- (b) Is under twenty-one years of age; or
- (c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or
- (d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or
- (e) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or
- (f) Has been ordered to forfeit a firearm under RCW 9.41.098(1)(d) within one year before filing an application to carry a pistol concealed on his or her person; or
- (g) Has been convicted of any of the following offenses: Assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, or theft in the first or second degree. Any person who becomes ineligible for a concealed pistol permit as a result of a conviction for a crime listed in this subsection (1)(g) and then successfully completes all terms of his or her sentence, as evidenced by a certificate of discharge issued under RCW 9.94A.220 in the case of a sentence under chapter 9.94A RCW, and has not again been convicted of any crime and is not under indictment for any crime, may, one year or longer after such successful sentence completion, petition the district court for a declaration that the person is no longer ineligible for a concealed pistol permit under this subsection (1)(g).

(2) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored.

(3) The license shall be revoked by the issuing authority immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years.

(4) Upon an order to forfeit a firearm under RCW 9.41.098(1)(d) the issuing authority shall:

(a) On the first forfeiture, revoke the license for one year;

(b) On the second forfeiture, revoke the license for two years;

(c) On the third or subsequent forfeiture, revoke the license for five years.

Any person whose license is revoked as a result of a forfeiture of a firearm under RCW 9.41.098(1)(d) may not reapply for a new license until the end of the revocation period. The issuing authority shall notify, in writing, the department of licensing upon revocation of a license. The department of licensing shall record the revocation.

(5) The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. The license application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license application shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's place of birth, whether the applicant is a United States citizen, ~~((and if not a citizen whether the applicant has declared the intent to become a citizen))~~ and whether he or she has been required to register with the state or federal government and ~~((any))~~ has an identification or registration number ~~((, if applicable))~~. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. ~~((An applicant who is not a citizen shall provide documentation showing resident alien status and the applicant's intent to become a citizen.))~~ A person who makes a false statement regarding citizenship on the application is guilty of a misdemeanor. A person who is not a citizen of the United States ~~((~~

~~or has not declared his or her intention to become a citizen))~~ shall meet the additional requirements of RCW 9.41.170.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing said license.

(6) The fee for the original issuance of a four-year license shall be twenty-three dollars: PROVIDED, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: PROVIDED FURTHER, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;

(c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(d) Three dollars to the firearms range account in the general fund.

(7) The fee for the renewal of such license shall be fifteen dollars: PROVIDED, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: PROVIDED FURTHER, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(c) Three dollars to the firearms range account in the general fund.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (7) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife fund and used exclusively for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to

voluntarily submit any information not required by this section. A civil suit may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section or chapter. The civil suit may be brought in the county in which the application was made or in Thurston county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded costs, including reasonable attorneys' fees, incurred in connection with such legal action.

Passed the Senate March 7, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 191

[Substitute Senate Bill 6063]

LOCAL VOTERS' PAMPHLETS

AN ACT Relating to local voters' pamphlets; and amending RCW 29.81A.020 and 29.81A.080. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29.81A.020 and 1984 c 106 s 4 are each amended to read as follows:

(1) ~~((Within five days of the adoption by the county legislative authority of an ordinance authorizing))~~ Not later than ninety days before the publication and distribution of a local voters' pamphlet by a county, the county auditor shall notify each city, town, or special taxing district located wholly within that county that a pamphlet will be produced. ((If the ordinance applies to future primaries or elections, the ordinance shall provide for such a notification prior to those primaries or elections.))

(2) If a voters' pamphlet is published by the county for a primary or general election, the pamphlet shall be published for the elective offices and ballot measures of the county and for the elective offices and ballot measures of each unit of local government located entirely within the county which will appear on the ballot at that primary or election. However, the offices and measures of a first class or code city shall not be included in the pamphlet if the city publishes and distributes its own voters' pamphlet for the primary or election for its offices and measures. The offices and measures of any other town or city are not required to appear in the county's pamphlet if the town or city is obligated by ordinance or charter to publish and distribute a voters' pamphlet for the primary or election for its offices and measures and it does so.

If the required appearance in a county's voters' pamphlet of the offices or measures of a unit of local government would create undo financial hardship for the unit of government, the legislative authority of the unit may petition the legislative authority of the county to waive this requirement. The legislative

authority of the county may provide such a waiver if it does so not later than sixty days before the publication of the pamphlet and it finds that the requirement would create such hardship.

(3) If a city, town, or district is located within more than one county, the respective county auditors may enter into an interlocal agreement to permit the distribution of each county's local voters' pamphlet into those parts of the city, town, or district located outside of that county.

~~((2))~~ (4) If a first-class or code city authorizes the production and distribution of a local voters' pamphlet, the city clerk of that city shall notify any special taxing district located wholly within that city that a pamphlet will be produced. Notification shall be provided in the manner required or provided for in subsection (1) of this section.

~~((3) Upon receipt of the notification, the legislative authority of each city, town, or district shall determine whether it will include any information from that jurisdiction in the local voters' pamphlet for a specific primary, special election, or general election or for any future primaries or elections. If it chooses to participate, it shall include information on all measures from that jurisdiction, and may include information on candidates.))~~

(5) A unit of local government located within a county and the county may enter into an interlocal agreement for the publication of a voters' pamphlet for offices or measures not required by subsection (2) of this section to appear in a county's pamphlet.

Sec. 2. RCW 29.81A.080 and 1984 c 106 s 10 are each amended to read as follows:

For each measure from a ~~((jurisdiction))~~ unit of local government that is included in a local voters' pamphlet, the legislative authority of that jurisdiction shall, not later than forty-five days before the publication of the pamphlet, formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to prepare arguments advocating voters' rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. If the legislative authority of a unit of local government fails to make such appointments by the prescribed deadline, the county auditor shall whenever possible make the appointments.

Passed the Senate March 5, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 192

[Senate Bill 6065]

COSTS IMPOSED UPON CONVICTED DEFENDANTS

AN ACT Relating to imposition of costs; and amending RCW 10.01.160.

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

Sec. 1. RCW 10.01.160 and 1991 c 247 s 4 are each amended to read as follows:

(1) The court may require a (~~convicted~~) defendant (~~or defendant granted a deferred prosecution under chapter 10.05 RCW;~~) to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a (~~convicted~~) defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court (~~(which sentenced him)~~) for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or (~~his~~) the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

Passed the Senate March 8, 1994.

Passed the House March 1, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 193

[Substitute Senate Bill 6070]

LOCAL GOVERNMENT ARCHIVES AND RECORDS MANAGEMENT

AN ACT Relating to public records preservation, maintenance, and disposition by agencies of local government and the secretary of state; adding a new section to chapter 40.14 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five-dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them.

NEW SECTION. Sec. 2. A new section is added to chapter 40.14 RCW to read as follows:

State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.020(4). The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account, or procedures for the collection and transmittal of surcharge revenue to the archives and records management account

shall be established cooperatively between the filing agencies and clerks of superior court.

Surcharge revenue deposited in the archives and records management account shall be expended by the secretary of state exclusively for the payment of costs and expenses incurred in the provision of public archives and records management services to local government agencies by the division of archives and records management. The secretary of state shall work with local government representatives to establish a committee to advise the state archivist on the local government archives and records management program. Surcharge revenue shall be allocated exclusively to:

(1) Appraise, process, store, preserve, and provide public research access to original records designated by the state archivist as archival which are no longer required to be kept by the agencies which originally made or filed them;

(2) Protect essential records, as provided by chapters 40.10 and 40.20 RCW. Permanent facsimiles of essential records shall be produced and placed in security storage with the state archivist;

(3) Coordinate records retention and disposition management and provide support for the following functions under RCW 40.14.070:

(a) Advise and assist individual agencies on public records management requirements and practices; and

(b) Compile, maintain, and regularly update general records retention schedules and destruction authorizations; and

(4) Develop and maintain standards for the application of recording media and records storage technologies.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1994.

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 194

[Substitute Senate Bill 6089]

COLLEGIATE LICENSE PLATES

AN ACT Relating to institutions of higher education collegiate license plates; amending RCW 46.16.301, 46.16.313, 46.16.332, and 46.16.381; adding a new section to chapter 46.04 RCW; adding a new section to chapter 46.16 RCW; adding a new section to chapter 28B.10 RCW; creating a new section; repealing RCW 46.16.323; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.04 RCW to read as follows:

"Collegiate license plates" means license plates that display a depiction of the name and mascot or symbol of a state university, regional university, or state college as defined in RCW 28B.10.016.

Sec. 2. RCW 46.16.301 and 1990 c 250 s 1 are each amended to read as follows:

(1) The department may create, design, and issue special license plates(~~(upon terms and conditions as may be established by the department,))~~) that may be used in lieu of regular or personalized license plates ((upon)) for motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates may:

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

(b) Denote special activities or interests(~~(r))~~; ~~or~~

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

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

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

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.16 RCW to read as follows:

Effective January 1, 1995, a state university, regional university, or state college as defined in RCW 28B.10.016 may apply to the department, in a form prescribed by the department, and request the department to issue a series of collegiate license plates depicting the name and mascot or symbol of the college or university, as submitted and approved for use by the requesting institution.

Sec. 4. RCW 46.16.313 and 1990 c 250 s 4 are each amended to read as follows:

(1) The department may establish a fee for ~~((the issuance of))~~ each type of special license ~~((plate or))~~ plates issued under RCW 46.16.301(1) (a), (b), or (c) in an amount calculated to offset the cost of production of the special license ~~((plate or))~~ plates and the administration of this program. The fee shall not exceed thirty-five dollars and is in addition to all other fees required to register

and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in section 7 of this act.

Sec. 5. RCW 46.16.332 and 1990 c 250 s 9 are each amended to read as follows:

(1) The director may adopt fees to be charged by the department for emblems issued by the department under RCW 46.16.319 ~~((and 46.16.323))~~.

(2) The fee for each remembrance emblem issued under RCW 46.16.319 shall be in an amount sufficient to offset the costs of production of remembrance emblems and the administration of that program by the department plus an amount for use by the department of veterans affairs, not to exceed a total fee of twenty-five dollars per emblem. ~~((The fee for each special vehicle license plate emblem issued under RCW 46.16.323 shall be an amount sufficient to offset the cost of production of the emblems and of administering the special vehicle license plate emblem program.))~~

(3) The veterans' emblem account is created in the custody of the state treasurer. All receipts by the department from the issuance of remembrance emblems under RCW 46.16.319 shall be deposited into this fund. Expenditures from the fund may be used only for the costs of production of remembrance emblems and administration of the program by the department of licensing, with the balance used only by the department of veterans affairs for projects that pay tribute to those living veterans and to those who have died defending freedom in our nation's wars and conflicts and for the upkeep and operations of existing memorials, as well as for planning, acquiring land for, and constructing future memorials. Only the director of licensing, the director of veterans affairs, or their designees 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.

~~((4) The special vehicle license plate emblem account is established in the state treasury. Fees collected by the department for emblems issued under RCW 46.16.323 shall be deposited into the special vehicle license plate emblem account to be used only to offset the costs of administering the special vehicle license plate emblem program.))~~

Sec. 6. RCW 46.16.381 and 1993 c 106 s 1 are each amended to read as follows:

(1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Is so severely disabled, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, ~~((and))~~ private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing

home, boarding homes, senior citizen center, ~~((or))~~ private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, ~~((and))~~ private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(3) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the disabled person and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled person, the removed plate shall be immediately surrendered to the director.

(4) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. The director may issue a second temporary placard during that period if requested by the person who is temporarily disabled. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The parking placard of a disabled person shall be renewed, when required by the director, by satisfactory proof of the right to continued use of the privileges.

(5) Additional fees shall not be charged for the issuance of the special placards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(6) Any unauthorized use of the special placard or the special license plate is a misdemeanor.

(7) It is a traffic infraction, with a monetary penalty of fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section. A local jurisdiction providing on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions on the use of these parking places.

(8) The portion of a penalty imposed under subsection (7) of this section that is retained by a local jurisdiction under RCW 3.46.120, 3.50.100, 3.62.020, 3.62.040, or 35.20.220 shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to

reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(9) It is a misdemeanor for any person to willfully obtain a special license plate or placard in a manner other than that established under this section.

NEW SECTION. **Sec. 7.** A new section is added to chapter 28B.10 RCW to read as follows:

A collegiate license plate fund is established in the custody of the state treasurer for each college or university with a collegiate license plate program approved by the department under section 3 of this act. All receipts from collegiate license plates authorized under RCW 46.16.301 shall be deposited in the appropriate local college or university nonappropriated, nonallotted fund. Expenditures from the funds may be used only for student scholarships. Only the president of the college or university or the president's designee may authorize expenditures from the fund.

NEW SECTION. **Sec. 8.** By January 1, 1996, the department of licensing shall report to the legislative transportation committee regarding the number of colleges or universities issued a collegiate license plate series, and the total number of collegiate plates issued for each participating college or university.

NEW SECTION. **Sec. 9.** RCW 46.16.323 and 1990 c 250 s 7 are each repealed.

Passed the Senate March 9, 1994.

Passed the House March 9, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 195

[Substitute Senate Bill 6093]

OUT-OF-STATE COLLECTION AGENCIES—REGULATION

AN ACT Relating to collection of debts; and amending RCW 19.16.100, 19.16.110, 19.16.120, 19.16.140, 19.16.190, 19.16.230, 19.16.240, 19.16.260, 19.16.390, 19.16.430, 19.16.440, and 19.16.920.

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

Sec. 1. RCW 19.16.100 and 1990 c 190 s 1 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks;
(~~(e)~~)

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account; or

(e) An "out-of-state collection agency" as defined in this chapter.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state.

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

~~((5))~~ (6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

~~((6))~~ (7) "Director" means the director of licensing.

~~((7))~~ (8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

~~((8))~~ (9) "Licensee" means any person licensed under this chapter.

~~((9))~~ (10) "Board" means the Washington state collection agency board.

~~((10))~~ (11) "Debtor" means any person owing or alleged to owe a claim.

Sec. 2. RCW 19.16.110 and 1971 ex.s. c 253 s 2 are each amended to read as follows:

No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency or out-of-state collection agency duly licensed under this chapter to procure a collection agency license.

Sec. 3. RCW 19.16.120 and 1977 ex.s. c 194 s 1 are each amended to read as follows:

In addition to other provisions of this chapter, any license issued pursuant to this chapter or any application therefor may be denied, not renewed, revoked, or suspended, or in lieu of or in addition to suspension a licensee may be assessed a civil, monetary penalty in an amount not to exceed one thousand dollars:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150, if applicable, have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190, if applicable, has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Shall have knowingly made a false statement of a material fact in any application for a collection agency license or an out-of-state collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement;

(b) Shall have had a license to engage in the business of a collection agency or out-of-state collection agency denied, not renewed, suspended, or revoked by this state, any other state, or foreign country, for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements: PROVIDED, That the terms of this subsection shall not apply if:

(i) Two years have elapsed since the time of any such denial, nonrenewal, or revocation; or

(ii) The terms of any such suspension have been fulfilled;

(c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or

conspiracy to defraud and is incarcerated for that offense or five years have not elapsed since the date of such conviction;

(d) Has had any judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

(e) Has had his license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he has been relicensed to practice law in this state;

(f) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency or an out-of-state collection agency;

(g) Has petitioned for bankruptcy, and two years have not elapsed since the filing of said petition;

(h) Shall be insolvent in the sense that his or its liabilities exceed his or its assets or in the sense that he or it cannot meet his or its obligations as they mature;

(i) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 or 19.16.360 within ten days after the assessment becomes final; ((e*))

(j) Has knowingly failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation; or

(k) Has been found by a court of competent jurisdiction to have violated the federal fair debt collection practices act, 15 U.S.C. Sec. 1692 et seq., or the Washington state consumer protection act, chapter 19.86 RCW, and two years have not elapsed since that finding.

Any person who is engaged in the collection agency business as of January 1, 1972 shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license hereunder.

Sec. 4. RCW 19.16.140 and 1985 c 7 s 81 are each amended to read as follows:

Each applicant when submitting his application shall pay a licensing fee and an investigation fee determined by the director as provided in RCW 43.24.086. The licensing fee for an out-of-state collection agency shall not exceed fifty percent of the licensing fee for a collection agency. An out-of-state collection

agency is exempt from the licensing fee if the agency is licensed or registered in a state that does not require payment of an initial fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If a license is not issued in response to the application, the license fee shall be returned to the applicant.

An annual license fee determined by the director as provided in RCW 43.24.086 shall be paid to the director on or before January first of each year. The annual license fee for an out-of-state collection agency shall not exceed fifty percent of the annual license fee for a collection agency. An out-of-state collection agency is exempt from the annual license fee if the agency is licensed or registered in a state that does not require payment of an annual fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: PROVIDED, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

Any license or branch office certificate issued under the provisions of this chapter shall expire on December thirty-first following the issuance thereof.

Sec. 5. RCW 19.16.190 and 1971 ex.s. c 253 s 10 are each amended to read as follows:

(1) Except as limited by subsection (7) of this section, each applicant shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer less any offsets due licensee under RCW 19.16.210 and 19.16.220. The bond required by this section shall remain in effect until canceled by action of the surety or the licensee or the director.

(2) An applicant for a license under this chapter may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

(3) A surety may file with the director notice of his or its withdrawal on the bond of the licensee. Upon filing a new bond or upon the revocation of the collection agency license or upon the expiration of sixty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(4) The director 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.

(5) Upon the filing with the director of notice by a surety of his withdrawal as the surety on the bond of a licensee or upon the cancellation by the director of the bond of a surety as provided in this section, the director shall immediately give notice to the licensee of the withdrawal or cancellation. The notice shall be sent to the licensee by registered or certified mail with request for a return receipt and addressed to the licensee at his or its main office as shown by the records of the director. At the expiration of thirty days from the date of mailing the notice, the license of the licensee shall be terminated, unless the licensee has filed a new bond with a surety satisfactory to the director.

(6) All bonds given under this chapter shall be filed and held in the office of the director.

(7) An out-of-state collection agency need not fulfill the bonding requirements under this section if the out-of-state collection agency maintains an adequate bond or legal alternative as required by the state in which the out-of-state collection agency is located.

Sec. 6. RCW 19.16.230 and 1987 c 85 s 1 are each amended to read as follows:

(1) Every licensee required to keep and maintain records pursuant to this section, other than an out-of-state collection agency, shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.

(2) Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to in subsection (1) of this section, unless the licensee is an out-of-state collection agency, in which case the record shall be kept at the business office listed on the licensee's license.

(3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of four years from the date of the last entry thereon.

Sec. 7. RCW 19.16.240 and 1971 ex.s. c 253 s 15 are each amended to read as follows:

Each licensee, other than an out-of-state collection agency, shall at all times maintain a separate bank account in this state in which all moneys collected by

the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

The bank account shall bear some title sufficient to distinguish it from the licensee's personal or general checking account, such as "Customer's Trust Fund Account". There shall be sufficient funds in said trust account at all times to pay all moneys due or owing to all customers and no disbursements shall be made from such account except to customers or to remit moneys collected from debtors on assigned claims and due licensee's attorney or to refund over payments except that a licensee may periodically withdraw therefrom such moneys as may accrue to licensee.

Any money in such trust account belonging to a licensee may be withdrawn for the purpose of transferring the same into the possession of licensee or into a personal or general account of licensee.

Sec. 8. RCW 19.16.260 and 1971 ex.s. c 253 s 17 are each amended to read as follows:

No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter.

Sec. 9. RCW 19.16.390 and 1971 ex.s. c 253 s 30 are each amended to read as follows:

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. A holder of an out-of-state collection agency license is deemed to have appointed the director or the director's designee to be the licensee's true and lawful agent upon whom may be served any legal process against that licensee arising or growing out of any violation of this chapter.

Sec. 10. RCW 19.16.430 and 1973 1st ex.s. c 20 s 6 are each amended to read as follows:

(1) Any person who knowingly operates as a collection agency or out-of-state collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

(2) Any person who operates as a collection agency or out-of-state collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency or out-of-state collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid.

Sec. 11. RCW 19.16.440 and 1973 1st ex.s. c 20 s 7 are each amended to read as follows:

The operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW.

Sec. 12. RCW 19.16.920 and 1971 ex.s. c 253 s 42 are each amended to read as follows:

(1) The provisions of this chapter relating to the licensing and regulation of collection agencies and out-of-state collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon collection agencies or out-of-state collection agencies maintaining an office within that political subdivision if a business and occupation tax is levied by it upon other types of businesses within its boundaries.

Passed the Senate March 5, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 196

[Substitute Senate Bill 6138]

OBSTRUCTING A LAW ENFORCEMENT OFFICER

AN ACT Relating to obstructing a law enforcement officer; amending RCW 9A.76.020; and prescribing penalties.

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

Sec. 1. RCW 9A.76.020 and 1975 1st ex.s. c 260 s 9A.76.020 are each amended to read as follows:

~~((Every person who, (1) without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him by a public servant, or (2) in any such statement or report shall make any knowingly untrue statement to a public servant, or (3) shall knowingly hinder, delay, or obstruct any public servant in the discharge of his official powers or duties; shall be guilty of a misdemeanor.))~~

(1) A person is guilty of obstructing a law enforcement officer if the person:

(a) Willfully makes a false or misleading statement to a law enforcement officer who has detained the person during the course of a lawful investigation or lawful arrest; or

(b) Willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

(2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

(3) Obstructing a law enforcement officer is a gross misdemeanor.

Passed the Senate March 8, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 197

[Substitute Senate Bill 6143]

STATE RETIREMENT SYSTEMS—MEMBERSHIP SERVICE CREDIT FOR PRIOR SERVICE—ESTABLISHMENT OR RESTORATION

AN ACT Relating to establishing membership service credit for prior service rendered or restoring membership service credit represented by withdrawn contributions; amending RCW 41.26.170, 41.26.192, 41.26.194, 41.26.425, 41.26.520, 41.26.550, 41.32.010, 41.32.025, 41.32.240, 41.32.310, 41.32.498, 41.32.500, 41.32.510, 41.32.762, 41.32.810, 41.32.812, 41.32.825, 41.40.010, 41.40.023, 41.40.058, 41.40.150, 41.40.625, 41.40.710, 41.40.740, 41.50.010, 41.50.160, 41.54.020, 43.43.130, 43.43.260, and 43.43.280; reenacting and amending RCW 41.26.030; adding new sections to chapter 41.50 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. (1) This act removes the time limitations within the state's retirement systems for:

(a) The restoration of service credit represented by employee contributions withdrawn by a member of a state's retirement systems; or

(b) The crediting of certain service that, under the provisions of the system, was not creditable at the time it was performed, such as a probationary period or interrupted military service.

(2) This act expands the current procedures for establishing service credit previously earned, restoring withdrawn contributions, or repaying lump sums received in lieu of a benefit. In so doing, it allows the member of one of the state's retirement systems to obtain additional service credit by paying the value of this added benefit that was previously unavailable.

NEW SECTION. Sec. 2. A new section is added to chapter 41.50 RCW to read as follows:

(1) Except for those affected by subsection (4) of this section, a member of a retirement system specified by RCW 41.50.030 or, one previously established by the state but closed to new membership, may, as provided in each retirement system:

(a) Establish allowable membership service not previously credited;

(b) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(c) Restore service credit represented by a lump sum payment in lieu of benefits.

(2) Persons who previously have failed to:

(a) Establish service credit for service previously earned; or

(b) Reestablish service credit by the restoration of withdrawn contributions or repayment of a lump sum payment in lieu of a benefit, may now establish or reestablish such service credit by paying the actuarial value of the resulting increase in their benefit in a manner defined by the department.

(3) Any establishment of service credit for service previously rendered, restoration of service credit destroyed, or repayment of a lump sum received in lieu of benefit must be completed prior to retirement.

(4) Service credit is established for or restored to the period in which the service credit is earned.

NEW SECTION. Sec. 3. A new section is added to chapter 41.50 RCW to read as follows:

Upon termination for reasons other than retirement, the department shall inform a member withdrawing his or her contributions, and the member shall acknowledge in writing, of the right to restore such contributions upon reestablishment of membership in the respective retirement system and the requirements involved in such restoration.

NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW to read as follows:

The department shall adopt rules under chapter 34.05 RCW implementing and administering chapter . . . , Laws of 1994 (this act). These rules are to include, but are not limited to:

- (1) The application and calculation of actuarial value, with the agreement of the state actuary; and
- (2) Establishing the minimum partial payment or the minimum units of restored service, or both.

Sec. 5. RCW 41.26.030 and 1993 c 502 s 1 and 1993 c 322 s 1 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan II members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

- (i) The legislative authority of any city, town, county, or district;
- (ii) The elected officials of any municipal corporation; or
- (iii) The governing body of any other general authority law enforcement agency.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated

by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan II members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the

department, except a handicapped person in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or
- (v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability

retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan I members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular

member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under section 2(2) of this act, plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan I members.

(20) "Disability retirement" for plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopath licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;
 (K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, (~~fisheries~~) fish and wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

Sec. 6. RCW 41.26.170 and 1991 c 35 s 24 are each amended to read as follows:

(1) Should service of a member be discontinued except by death, disability, or retirement, the member shall, upon application therefor, be paid the accumulated contributions within sixty days after the day of application and the

rights to all benefits as a member shall cease: PROVIDED, That any member with at least five years' service may elect the provisions of RCW 41.26.090(2).

(2) Any member whose contributions have been paid in accordance with subsection (1) of this section and who reenters the service of an employer (~~((within ten years of the date of separation))~~) shall upon the restoration of ~~((all))~~ withdrawn contributions, which restoration must be completed within a total period of five years of service following resumption of employment, then receive credit toward retirement for the period of previous service which these contributions are to cover.

(3) If the member fails to meet the time limitations of subsection (2) of this section, the member may make the payment required under section 2(2) of this act prior to retirement. The member shall then receive credit toward retirement for the period of previous service that the withdrawn contributions cover.

Sec. 7. RCW 41.26.192 and 1992 c 157 s 1 are each amended to read as follows:

If a member of plan I served as a law enforcement officer or fire fighter under a prior pension system and that service is not creditable to plan I because the member withdrew his or her contributions plus accrued interest from the prior pension system, the member's prior service as a law enforcement officer shall be credited to plan I if the member pays to the retirement system ~~((by June 30, 1993, an))~~ the amount ((equal to that which the member withdrew from the prior pension system together with interest as determined by the director)) under section 2(2) of this act prior to retirement.

Sec. 8. RCW 41.26.194 and 1992 c 157 s 2 are each amended to read as follows:

If a plan I member's prior service as a law enforcement officer or fire fighter under a prior pension system is not creditable because, although employed in a position covered by a prior pension act, the member had not yet become a member of the pension system governed by the act, the member's prior service as a law enforcement officer or fire fighter shall be creditable under plan I, if the member pays to the plan ~~((on or before June 30, 1993, an))~~ the amount ((equal to the employee's and the employer's contributions that would have been required under the prior act when the member's service was rendered if the member had been a member of the prior pension system during that period, together with interest as determined by the director)) set forth under section 2(2) of this act prior to retirement.

Sec. 9. RCW 41.26.425 and 1982 c 144 s 1 are each amended to read as follows:

(1) On or after June 10, 1982, the director may pay a beneficiary, ~~((as defined in RCW 41.04.040(3))~~) subject to the provisions of subsection ~~((4))~~ (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.26.420 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial

equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, (~~as defined in RCW 41.04.040(3),~~) subject to the provisions of subsection (~~((4))~~) (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status (~~as defined in RCW 41.04.040(2))~~) reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations set forth under subsection (3) of this section, the member may reinstate all previous service under section 2(2) of this act prior to retirement. The sum deposited shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.26.420 or an earned disability allowance under RCW 41.26.470 qualify for participation under this section.

~~((5))~~ (6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system.

Sec. 10. RCW 41.26.520 and 1993 c 95 s 4 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection ~~((4))~~ (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner ~~((-- PROVIDED, That))~~.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under section 2(2) of this act prior to retirement.

(5) For the purpose of ~~((this))~~ subsection (3) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.26.450. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((4))~~ (6) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.26.450 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under section 2(2) of this act.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the average of the member's basic salary at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

~~((5))~~ (7) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

Sec. 11. RCW 41.26.550 and 1993 c 517 s 7 are each amended to read as follows:

(1) A member, who had left service and withdrawn the member's funds pursuant to RCW 41.26.540, shall receive service credit for such prior service if the member restores all withdrawn funds together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under section 2(2) of this act is paid.

Sec. 12. RCW 41.32.010 and 1993 c 95 s 7 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan I members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under section 2(2) of this act with regular interest thereon.

(b) "Accumulated contributions" for plan II members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under section 2(2) of this act, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan I members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan I members.

(10)(a) "Earnable compensation" for plan I members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(ii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(b) "Earnable compensation" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent

of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan I members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan I members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan I members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan I members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan I members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan II members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" means the time during which a member has been employed by an employer for compensation: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

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.

The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan II members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan II members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan II on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan II" means the teachers' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

Sec. 13. RCW 41.32.025 and 1991 c 35 s 35 are each amended to read as follows:

The department is empowered within the limits of this chapter and, with regard to restoration of service credit under section 2 of this act, to decide on all questions of eligibility covering membership, service credit, and benefits.

Sec. 14. RCW 41.32.240 and 1991 c 35 s 38 are each amended to read as follows:

(1) All teachers employed full time in the public schools shall be members of the system except alien teachers who have been granted a temporary permit to teach as exchange teachers.

(2) A minimum of ninety days or the equivalent of ninety days of employment during a fiscal year shall be required to establish membership. A teacher shall be considered as employed full time if serving regularly for four-fifths or more of a school day or if assigned to duties which are the equivalent of four-fifths or more of a full time assignment. A teacher who is employed for less than full time service may become a member by filing an application with the retirement system, submitting satisfactory proof of teaching service and making the necessary payment before June 30 of the school year immediately following the one during which the service was rendered.

(3) After June 30th of the school year immediately following the one during which the less than full-time service was rendered, the necessary payment may be made under section 2(2) of this act.

Sec. 15. RCW 41.32.310 and 1992 c 72 s 6 are each amended to read as follows:

(1) Any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments on or before June 30 of the fifth school year of membership. Payments covering all types of membership service credit must be made in a lump sum when due, or in annual installments. The first annual installment of at least twenty percent of the amount due must be paid before the above deadline date, and the final payment must be made by June 30th of the fourth school year following that in which the first installment was made. The amount of payment and the interest thereon, whether lump sum or installments, shall be made by a method and in an amount established by the department.

(2) A member who had the opportunity under chapter 41.32 RCW prior to July 1, 1969, to establish credit for active United States military service or credit for professional preparation and failed to do so shall be permitted to establish additional credit within the provisions of RCW 41.32.260 and 41.32.330. A member who was not permitted to establish credit pursuant to section 2, chapter 32, Laws of 1973 2nd ex. sess., for Washington teaching service previously rendered, must present proof and make the necessary payment to establish such credit as membership service credit. Payment for such credit must be made in a lump sum on or before June 30, 1974. Any member desiring to establish credit under the provisions of this ~~((1969 amendment))~~ subsection must present proof and make the necessary payment before June 30, 1974; or, if not employed on the effective date of this amendment, before June 30th of the fifth school year upon returning to public school employment in this state.

(3) After June 30th of the fifth school year of membership, any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments under section 2(2) of this act but prior to retirement.

Sec. 16. RCW 41.32.498 and 1991 c 35 s 55 are each amended to read as follows:

Any person who becomes a member subsequent to April 25, 1973 or who has made the election, provided by RCW 41.32.497, to receive the benefit provided by this section, shall receive a retirement allowance consisting of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions on full salary as provided by chapter 274, Laws of 1955 and his or her lump sum payment in excess of the required contribution rate made at date of retirement, pursuant to RCW 41.32.350, if any; and

(2) A combined pension and annuity service retirement allowance which shall be equal to two percent of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system, to a maximum of sixty percent of such average earnable compensation: **PROVIDED**, That any member may irrevocably elect, at time of retirement, to withdraw all or a part of his or her accumulated contributions, other than any amount paid under section 2(2) of this act, and to receive, in lieu of the full retirement allowance

provided by this subsection, a reduction in the standard two percent allowance, of the actuarially determined amount of monthly annuity which would have been purchased by said contributions: PROVIDED FURTHER, That no member may withdraw an amount of accumulated contributions which would lower his or her retirement allowance below the minimum allowance provided by RCW 41.32.497 as now or hereafter amended: AND PROVIDED FURTHER, That said reduced amount may be reduced even further pursuant to the options provided in RCW 41.32.530;

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the retirement allowance payable for service of a member who was state superintendent of public instruction on January 1, 1973 shall be equal to three percent of the average earnable compensation of his two highest consecutive years of service for each year of such service.

Sec. 17. RCW 41.32.500 and 1991 c 35 s 57 are each amended to read as follows:

~~((+))~~ Membership in the retirement system is terminated when a member retires for service or disability, dies, withdraws the accumulated contributions or does not establish service credit with the retirement system for five consecutive years; however, a member may retain membership in the teachers' retirement system by leaving the accumulated contributions in the teachers' retirement fund under one of the following conditions:

~~((a))~~ (1) If he or she is eligible for retirement;

~~((b))~~ (2) If he or she is a member of another public retirement system in the state of Washington by reason of change in employment and has arranged to have membership extended during the period of such employment;

~~((c))~~ (3) If he or she is not eligible for retirement but has established five or more years of Washington membership service credit.

The prior service certificate becomes void when a member dies, withdraws the accumulated contributions or does not establish service credit with the retirement system for five consecutive years, and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved.

~~((2) Any member, except an elected official, who reentered service and who failed to restore withdrawn contributions, shall now have from April 4, 1986, through June 30, 1987, to restore the contributions, with interest as determined by the director.~~

~~(3) Within the ninety days following the employee's resumption of employment, the employer shall notify the department of the resumption and the department shall then return to the employer a statement of the potential service credit to be restored, the amount of funds required for restoration, and the date when the restoration must be accomplished. The employee shall be given a copy of the statement and shall sign a copy of the statement which signed copy shall be placed in the employee's personnel file.)~~

Sec. 18. RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each amended to read as follows:

(1) Should a member cease to be employed by an employer and request upon a form provided by the department a refund of the member's accumulated contributions with interest, this amount shall be paid to the individual less any withdrawal fee which may be assessed by the director which shall be deposited in the department of retirement systems expense fund. ~~((The amount withdrawn, together with interest as determined by the director must be paid if the member desires to reestablish the former service credits.))~~

(2) Termination of employment with one employer for the specific purpose of accepting employment with another employer or termination with one employer and reemployment with the same employer, whether for the same school year or for the ensuing school year, shall not qualify a member for a refund of the member's accumulated contributions.

(3) A member who files an application for a refund of the member's accumulated contributions and subsequently enters into a contract for or resumes public school employment before a refund payment has been made shall not be eligible for such payment.

Sec. 19. RCW 41.32.762 and 1982 c 144 s 2 are each amended to read as follows:

(1) On or after June 10, 1982, the director may pay a beneficiary, ~~((as defined in RCW 41.04.040(3).))~~ subject to the provisions of subsection ~~((4))~~ (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.32.760 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, ~~((as defined in RCW 41.04.040(3).))~~ subject to the provisions of subsection ~~((4))~~ (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status ~~((as defined in RCW 41.04.040(2).))~~ reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under section 2(2) of this act. The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.32.760 or an earned disability allowance under RCW 41.32.790 qualify for participation under this section.

~~((5))~~ (6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system.

Sec. 20. RCW 41.32.810 and 1993 c 95 s 6 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection ~~((4))~~ (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner~~((+PROVIDED, That))~~.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under section 2(2) of this act prior to retirement.

(5) For the purpose of ~~(this)~~ subsection (3) of this section, the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((4))~~ (6) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.32.775 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under section 2(2) of this act.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the average of the member's earnable compensation at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

Sec. 21. RCW 41.32.812 and 1992 c 212 s 20 are each amended to read as follows:

The department of retirement systems shall credit at least one-half service credit month for each month of each school year, as defined by RCW 28A.150.040, from October 1, 1977, through December 31, 1986, to a member of the teachers' retirement system plan II who was employed by an employer, as defined by RCW 41.32.010, under a contract for half-time employment as determined by the department for such school year and from whose compensation contributions were paid by the employee or picked up by the employer. Any withdrawn contributions shall be restored under RCW 41.32.500(1) or section 2 of this act prior to crediting any service.

Sec. 22. RCW 41.32.825 and 1988 c 117 s 2 are each amended to read as follows:

(1) A member, who had left service and withdrawn the member's accumulated contributions, shall, upon reestablishment of membership under RCW 41.32.240, receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department. The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under section 2(2) of this act is paid.

Sec. 23. RCW 41.40.010 and 1993 c 95 s 8 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) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan I members, 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 plan II members, 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 41.40.023.

(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 plan I members, 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 plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude 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 plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

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 service credit months of service during any calendar year: PROVIDED FURTHER, That where an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

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 service credit months of service for such calendar year: PROVIDED, That when an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "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 41.40.023: 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.

(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under section 2(2) of this act, together with the regular interest thereon.

(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.023.

(23) "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.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "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.

(28) "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.

(29) "Retiree" 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.

(30) "Director" means the director of the department.

(31) "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.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

Sec. 24. RCW 41.40.023 and 1993 c 319 s 1 are each amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by

the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: **AND PROVIDED FURTHER**, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan: **PROVIDED, HOWEVER**, In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide: **AND PROVIDED FURTHER**, That an employee shall be allowed membership if otherwise eligible while receiving survivor's benefits: **AND PROVIDED FURTHER**, That an employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (a) Membership in the plan created under chapter 2.14 RCW; or (b) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as agency vendors;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Plan I retirees employed in eligible positions on a temporary basis for a period not to exceed five months in a calendar year: PROVIDED, That if such employees are employed for more than five months in a calendar year in an eligible position they shall become members of the system prospectively;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under section 2(2) of this act, otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under section 2(2) of this act for the period from the date of their appointment to the date of acceptance into membership.

Sec. 25. RCW 41.40.058 and 1987 c 417 s 1 are each amended to read as follows:

(1) Any person who was a member of the state-wide city employees' retirement system governed by chapter 41.44 RCW and who also became a member of (~~the public employees'~~) this retirement system on or before July 26, 1987, may, in a writing filed with the director, elect to:

(a) Transfer to (~~the public employees'~~) this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to (~~the public employees'~~) this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of (~~the public employees'~~) this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a

rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of ~~((the public employees'))~~ this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the state-wide city employees' retirement system and as defined in RCW 41.44.030(13). However, a person who has established service credit under RCW ~~((41.40.010(1+)))~~ 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under RCW ~~((41.40.010(1+)))~~ 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2)(a) In the case of a member of ~~((the public employees'))~~ this retirement system who is employed by an employer on July 26, 1987, the written election required by subsection (1) of this section must be filed and the payments required by subsection (1)(b) and (c) of this section must be completed in full within one year after July 26, 1987.

(b) In the case of a former member of ~~((the public employees'))~~ this retirement system who is not employed by an employer on July 26, 1987, the written election must be filed and the payments must be completed in full within one year after reemployment by an employer.

(c) In the case of a retiree receiving a retirement allowance from ~~((the public employees'))~~ this retirement system on July 26, 1987, or any person having vested rights as described in RCW 41.40.150 ~~((3) or (5))~~ (4), the written election may be filed and the payments may be completed at any time.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (2)~~((e))~~ of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the state-wide city employees' retirement system under chapter 41.44 RCW and also became a member of this retirement system, and did not make the election under subsection (1) of this section because he or she was not a member of this retirement system prior to July 27, 1987 or did not meet the time limitations of subsection (2) (a) or (b) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under section 2(2) of this act prior to retirement from this retirement system.

Sec. 26. RCW 41.40.150 and 1992 c 195 s 1 are each amended to read as follows:

Should any member die, or should the individual separate or be separated from service without leave of absence before attaining age sixty years, or should the individual become a beneficiary, except a beneficiary of an optional retirement allowance as provided by RCW 41.40.188, the individual shall thereupon cease to be a member except;

(1) As provided in RCW 41.40.170.

(2) An employee not previously retired who reenters service shall upon completion of six months of continuous service and upon the restoration, in one lump sum or in annual installments, of all withdrawn contributions: (a) With interest as computed by the director, which restoration must be completed within a total period of five years of membership service following the member's first resumption of employment((:)) or (b) paying the amount required under section 2(2) of this act, be returned to the status, either as an original member or new member which the member held at time of separation.

~~(3) ((Within the ninety days following the employee's resumption of employment, the employer shall notify the department of the resumption and the department shall then return to the employer a statement of the potential service credit to be restored, the amount of funds required for restoration, and the date when the restoration must be accomplished. The employee shall be given a copy of the statement and shall sign a copy of the statement which signed copy shall be placed in the employee's personnel file.~~

~~(4))~~ A member who separates or has separated after having completed at least five years of service shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty-five, however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

~~((5))~~ ~~(4)~~(a) The recipient of a retirement allowance who is employed in an eligible position other than under RCW 41.40.023(12) shall be considered to have terminated his or her retirement status and shall immediately become a

member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended during the period of eligible employment and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered two uninterrupted years of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated;

(b) The recipient of a retirement allowance elected to office or appointed to office directly by the governor, and who shall apply for and be accepted in membership as provided in RCW 41.40.023(3) shall be considered to have terminated his or her retirement status and shall become a member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended from the date of return to membership until the date when the member again retires and the member shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered six uninterrupted months of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated, but no additional service credit shall be allowed: AND PROVIDED FURTHER, That if such a recipient of a retirement allowance does not elect to apply for reentry into membership as provided in RCW 41.40.023(3), the member shall be considered to remain in a retirement status and the individual's retirement benefits shall continue without interruption.

~~((6))~~ (5) Any member who leaves the employment of an employer and enters the employ of a public agency or agencies of the state of Washington, other than those within the jurisdiction of ~~((the Washington public employees'))~~ this retirement system, and who establishes membership in a retirement system or a pension fund operated by such agency or agencies and who shall continue membership therein until attaining age sixty, shall remain a member for the exclusive purpose of receiving a retirement allowance without the limitation found in RCW 41.40.180(1) to begin on attainment of age sixty-five; however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits commencing at age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

Sec. 27. RCW 41.40.625 and 1991 c 35 s 98 are each amended to read as follows:

(1) On or after June 10, 1982, the director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the

provisions of subsection ~~((4))~~ (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.40.620 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection ~~((4))~~ (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under section 2(2) of this act. The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.40.620 or an earned disability allowance under RCW 41.40.670 qualify for participation under this section.

~~((5))~~ (6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system.

Sec. 28. RCW 41.40.710 and 1993 c 95 s 2 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who

establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under section 2(2) of this act.

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.40.650 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under section 2(2) of this act.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.40.650 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the average of the member's compensation earnable at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

Sec. 29. RCW 41.40.740 and 1977 ex.s. c 295 s 15 are each amended to read as follows:

(1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under section 2(2) of this act is paid.

Sec. 30. RCW 41.50.010 and 1975-'76 2nd ex.s. c 105 s 3 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Actuarial value" means the present value of a change in actuarial liability;

(2) "Department" means the department of retirement systems; and

~~((2))~~ (3) "Director" means the director of the department of retirement systems.

Sec. 31. RCW 41.50.160 and 1992 c 195 s 2 are each amended to read as follows:

The department of retirement systems shall incorporate the development of individual member accounts receivable into its information systems projects for fiscal years 1993 and 1994, so that by January 1, 1994, members of state retirement systems who are otherwise eligible to restore previously withdrawn contributions have the option to make ~~((the))~~ restoration ~~((in annual installments))~~ in a manner determined by the department.

Sec. 32. RCW 41.54.020 and 1987 c 384 s 2 are each amended to read as follows:

(1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

(2) If a member has withdrawn contributions from a prior system, the member 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. Such restoration must be completed within two years of establishing dual membership or prior to retirement, whichever occurs first.

~~(3) ((A member of the retirement system under chapter 41.32 RCW who is serving in office pursuant to Article II or III of the state Constitution may, notwithstanding the provisions of RCW 41.40.023(4), within one year from July 1, 1988, make an irrevocable election to become a member of the retirement system under chapter 41.40 RCW. A member who makes this election shall receive service credit under chapter 41.40 RCW for all prior and future periods of employment which are, or otherwise would be, credited under chapter 41.32 RCW. Such a member who established membership under chapter 41.32 RCW~~

prior to June 30, 1977, shall be granted membership under chapter 41.40 RCW as if he or she had been a member of that system prior to June 30, 1977.

~~All contributions credited to such member under chapter 41.32 RCW for service now to be credited in the retirement system under chapter 41.40 RCW shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.32 RCW for those periods of service.)~~ If a member does not meet the time limitation under subsection (2) of this section, the member, prior to retirement, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under section 2(2) of this act.

(4) Any service accrued in one system by the member shall not accrue in any other system.

Sec. 33. RCW 43.43.130 and 1987 c 215 s 1 are each amended to read as follows:

(1) A Washington state patrol retirement fund is hereby established for members of the Washington state patrol which shall include funds created and placed under the management of a retirement board for the payment of retirement allowances and other benefits under the provisions hereof.

(2) Any employee of the Washington state patrol, upon date of commissioning, shall be eligible to participate in the retirement plan and shall start contributing to the fund immediately. Any employee of the Washington state patrol employed by the state of Washington or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington shall receive full credit for such prior service but after that date each new commissioned employee must automatically participate in the fund. If a member shall terminate service in the patrol and later reenter, he shall be treated in all respects as a new employee(~~(- PROVIDED, That)~~).

(3)(a) A member who reenters or has reentered service within ten years from the date of his termination, shall upon completion of six months of continuous service and upon the restoration of all withdrawn contributions, plus interest as determined by the director, which restoration must be completed within five years after resumption of service, be returned to the status of membership he earned at the time of termination.

~~((3))~~ (b) A member who does not meet the time limitations for restoration under (a) of this subsection, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under section 2(2) of this act prior to retirement.

(4)(a) An employee of the Washington state patrol who becomes a member of the retirement system after June 12, 1980, and who has service as a cadet in the patrol training program may make an irrevocable election to transfer the service to the retirement system. Any member upon making such election shall have transferred all existing service credited in a prior public retirement system in this state for periods of employment as a cadet. Transfer of credit under this

subsection is contingent on completion of the transfer of funds specified in ~~((subsection (3))~~(b) of this ~~((section))~~ subsection.

(b) Within sixty days of notification of a member's cadet service transfer as provided in ~~((subsection (3))~~(a) of this ~~((section))~~ subsection, the department of retirement systems shall transfer the employee's accumulated contributions attributable to the periods of service as a cadet, including accumulated interest.

~~((4))~~ (5) A member of the retirement system who has served or shall serve on active federal service in the armed forces of the United States pursuant to and by reason of orders by competent federal authority, who left or shall leave the Washington state patrol to enter such service, and who within one year from termination of such active federal service, resumes employment as a state employee, shall have his service in such armed forces credited to him as a member of the retirement system: PROVIDED, That no such service in excess of five years shall be credited unless such service was actually rendered during time of war or emergency.

~~((5))~~ (6) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, and who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system within a period ending June 30, 1985, or, if not an active employee on July 1, 1983, within one year of returning to commissioned service, whichever date is later. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system which constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in this subsection for making the elective transfer.

~~((6))~~ (7) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, or who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system if they have not met the time limitations of subsection (6) of this section by paying the amount required under section 2(2) of this act less the contributions transferred. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system that constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in subsection (6) of this section for making the elective transfer.

(8) An active employee of the Washington state patrol may establish up to six months' retirement service credit in the state patrol retirement system for any

period of employment by the Washington state patrol as a cadet if service credit for such employment was not previously established in the public employees' retirement system, subject to the following:

(a) Certification by the patrol that such employment as a cadet was for the express purpose of receiving on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper.

(b) Payment by the member of employee contributions in the amount of seven percent of the total salary paid for each month of service to be established, plus interest at seven percent from the date of the probationary service to the date of payment. This payment shall be made by the member no later than July 1, 1988.

(c) If the payment required under (b) of this subsection was not made by July 1, 1988, the member may establish the probationary service by paying the amount required under section 2(2) of this act.

(d) A written waiver by the member of the member's right to ever establish the same service in the public employees' retirement system at any time in the future.

~~((7))~~ (9) The department of retirement systems shall make the requested transfer subject to the conditions specified in ~~((subsection (5)))~~ subsections (6) and (7) of this section or establish additional credit as provided in subsection ~~((6))~~ (8) of this section. Employee contributions and credited interest transferred shall be credited to the employee's account in the Washington state patrol retirement system.

Sec. 34. RCW 43.43.260 and 1982 1st ex.s. c 52 s 27 are each amended to read as follows:

Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3) Any member with twenty-five years service in the Washington state patrol may have the member's service in the armed forces credited as a member whether or not the individual left the employ of the Washington state patrol to enter such armed forces: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or ~~((within five years of membership service following the member's first resumption of employment))~~ as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150, as now or

hereafter amended: AND PROVIDED FURTHER, That in no instance shall military service be credited to any member who is receiving full military retirement benefits pursuant to Title 10 United States Code, as now or hereafter amended.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) A yearly increase in retirement allowance which shall amount to two percent of the retirement allowance computed at the time of retirement. This yearly increase shall be added to the retirement allowance on July 1st of each calendar year.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future.

Sec. 35. RCW 43.43.280 and 1991 c 365 s 32 are each amended to read as follows:

(1) If a member dies before retirement, and has no surviving spouse or children under the age of eighteen years, all contributions made by the member, including any amount paid under section 2(2) of this act, with interest as determined by the director, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to such person or persons as the member shall have nominated by written designation duly executed and filed with the department, or if there be no such designated person or persons, then to the member's legal representative.

(2) If a member should cease to be an employee before attaining age sixty for reasons other than the member's death, or retirement, the individual shall thereupon cease to be a member except as provided under RCW 43.43.130 (2) and (3) and, the individual may withdraw the member's contributions to the retirement fund, including any amount paid under section 2(2) of this act, with interest as determined by the director, by making application therefor to the department, except that: A member who ceases to be an employee after having completed at least five years of service shall remain a member during the period of the member's absence from employment for the exclusive purpose only of receiving a retirement allowance to begin at attainment of age sixty, however such a member may upon written notice to the department elect to receive a reduced retirement allowance on or after age fifty-five which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions, the individual shall thereupon cease to be a member and this subsection shall not apply.

NEW SECTION. **Sec. 36.** The department shall provide material to the members of the systems as specified under RCW 41.50.030 to inform them as to the effects of this act.

NEW SECTION. Sec. 37. 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. 38. This act shall take effect January 1, 1995.

NEW SECTION. Sec. 39. The director of the department of retirement systems may immediately take such steps as are necessary to ensure that this act is implemented on its effective date.

Passed the Senate March 7, 1994.
Passed the House March 4, 1994.
Approved by the Governor March 30, 1994.
Filed in Office of Secretary of State March 30, 1994.

CHAPTER 198

[Senate Bill 6203]

RURAL PARTIAL-COUNTY LIBRARY DISTRICTS

AN ACT Relating to limits on rural partial-county library districts; and amending RCW 27.12.010 and 27.12.470.

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

Sec. 1. RCW 27.12.010 and 1993 c 284 s 2 are each amended to read as follows:

As used in this chapter, unless the context requires a different meaning:

(1) "Governmental unit" means any county, city, town, rural county library district, intercounty rural library district, rural partial-county library district, or island library district;

(2) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit; in rural county library districts, in intercounty rural library districts, and in island library districts, the legislative body shall be the board of library trustees of the district;

(3) "Library" means a free public library supported in whole or in part with money derived from taxation;

(4) "Regional library" means a free public library maintained by two or more counties or other governmental units as provided in RCW 27.12.080;

(5) "Rural county library district" means a library serving all the area of a county not included within the area of incorporated cities and towns: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390;

(6) "Intercounty rural library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns within two or more counties: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390;

(7) "Island library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns on a single island only, and not all of the area of the county, in counties composed entirely of islands and having a population of less than twenty-five thousand at the time the island library district was created: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390; and

(8) "Rural partial-county library district" means a municipal corporation organized to provide library service for a portion of the unincorporated area of a county (~~(that has an assessed valuation of at least fifty million dollars)~~). Any city or town located in the same county as a rural partial-county library district may annex to the district if the city or town has a population of one hundred thousand or less at the time of annexation.

Sec. 2. RCW 27.12.470 and 1993 c 284 s 1 are each amended to read as follows:

A rural partial-county library district may be created in a portion of the unincorporated area of a county as provided in this section if a rural county library district, intercounty rural library district, or island library district has not been created in the county (~~(and the area proposed to be included in a rural partial-county library district has an assessed valuation of at least fifty million dollars)~~).

The procedure to create a rural partial-county library district is initiated by the filing of petitions with the county auditor proposing the creation of the district that have been signed by at least ten percent of the registered voters residing in the area proposed to be included in the rural partial-county library district. The county auditor shall review the petitions and certify the sufficiency or insufficiency of the signatures to the county legislative authority.

If the petitions are certified as having sufficient valid signatures, the county legislative authority shall hold a public hearing on the proposed rural partial-county library district, may adjust the boundaries of the proposed district, and may cause a ballot proposition to be submitted to the voters of the proposed rural partial-county library district authorizing its creation if the county legislative authority finds that the creation of the rural partial-county library district is in the public interest. A subsequent public hearing shall be held if additional territory is added to the proposed rural partial-county library district by action of the county legislative authority.

The rural partial-county library district shall be created if the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters voting on the proposition. Immediately after creation of the rural partial-county library district the county legislative authority shall appoint a board of library trustees for the district as provided under RCW 27.12.190.

Except as provided in this section, a rural partial-county library district is subject to all the provisions of law applicable to a rural county library district

and shall have all the powers, duties, and authorities of a rural county library district, including, but not limited to, the authority to impose property taxes, incur debt, and annex a city or town with a population of less than one hundred thousand at the time of the annexation that is located in the same county as the rural partial-county library district.

Adjacent unincorporated territory in the county may be annexed to a rural partial-county library district in the same manner as territory is annexed to a sewer district, except that an annexation is not subject to potential review by a boundary review board.

If, at the time of creation, a rural partial-county library district has an assessed valuation of less than fifty million dollars, it may provide library services only by contracting for the services through an interlocal agreement with an adjacent library district, or an adjacent city or town that maintains its own library. If the assessed valuation of the rural partial-county library district subsequently reaches fifty million dollars as a result of annexation or appreciation, the fifty million dollar limitation shall not apply.

If a ballot proposition is approved creating a rural county library district in the county, every rural partial-county library district in that county shall be dissolved and its assets and liabilities transferred to the rural county library district. Where a rural partial-county library district has annexed a city or town, the voters of the city or town shall be allowed to vote on the proposed creation of a rural county library district and, if created, the rural county library district shall include each city and town that was annexed to the rural partial-county library district.

Nothing in this section authorizes the consolidation of a rural partial-county library district with any rural county library district; island library district; city, county, or regional library; intercounty library district; or other rural partial-county library district, unless, in addition to any other requirements imposed by statute, the boards of all library districts involved approve the consolidation.

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 199

[Substitute Senate Bill 6217]

JOINT TASK ON UNEMPLOYMENT INSURANCE—DUTIES REVISED

AN ACT Relating to the joint task force on unemployment insurance; and amending 1993 c 483 s 22 (uncodified).

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

Sec. 1. 1993 c 483 s 22 (uncodified) is amended to read as follows:

(1) There is hereby created a joint task force on unemployment insurance composed of the following members:

(a) Four members of the senate labor and commerce committee, two from each of the major caucuses, to be appointed by the president of the senate;

(b) Four members of the house of representatives commerce and labor committee, two from each of the major caucuses, to be appointed by the speaker of the house of representatives; ~~(and)~~

(c) Up to eight members appointed jointly by the president of the senate and the speaker of the house of representatives representing business and labor in equal numbers. The business representatives shall be selected from nominations submitted by state-wide business organizations representing a cross-section of industries. The labor representatives shall be selected from nominations submitted by state-wide labor organizations representing a cross-section of industries; and

(d) When the task force is reviewing or making recommendations on the payment of administrative costs by employers who are exempt from the federal unemployment tax, one member representing employers subject to chapter 50.44 RCW and one member representing employees of employers subject to chapter 50.44 RCW, appointed jointly by the president of the senate and the speaker of the house of representatives.

(2) The employment security department unemployment insurance advisory committee shall act as an advisory body to the task force.

(3) The senate committee services and the office of program research shall provide the staff support as mutually agreed by the cochairs of the task force. The task force shall designate the cochairs.

(4) The members of the task force shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Task force travel and other expenses shall be paid from funds provided under RCW 50.24.014.

(5) The task force shall study the following issues:

~~(a) ((Financing and administration of unemployment insurance;~~

~~(b) Social costs;~~

~~(c) Administrative costs;~~

~~(d) Experience rating systems;~~

~~(e) Tax rates;~~

~~(f) Trust fund adequacy;~~

~~(g) Accountability and administrative funding of employment security department programs; and~~

(h)) Undertake an in-depth review of issues identified in the 1993 task force report to the legislature, including reviewing and making recommendations on the payment of administrative costs by employers who are exempt from the federal unemployment tax;

(b) Work collaboratively with the employment security department in implementation of task force recommendations;

(c) Assist the employment security department in responding to federal initiative and economic change, including the federally mandated new claimant profile program; and

(d) Any other issues deemed appropriate by the task force.

(6) The task force shall report its findings to the legislature by (~~December 31, 1993~~) January 15, 1995.

Passed the Senate March 6, 1994.

Passed the House March 4, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 200

[Substitute Senate Bill 6283]

RESIDENTIAL REAL PROPERTY—SELLER'S DISCLOSURES

AN ACT Relating to real estate disclosures; adding a new chapter to Title 64 RCW; and providing an effective date.

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

NEW SECTION. **Sec. 1.** This chapter applies only to residential real property. For purposes of this chapter, residential real property means:

- (1) Real property consisting of, or improved by, one to four dwelling units;
- (2) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW; or
- (3) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW.

NEW SECTION. **Sec. 2.** This chapter does not apply to the following transfers of residential real property:

- (1) A foreclosure, deed-in-lieu of foreclosure, or a sale by a lienholder who acquired the residential real property through foreclosure or deed-in-lieu of foreclosure;
- (2) A gift or other transfer to a parent, spouse, or child of a transferor or child of any parent or spouse of a transferor;
- (3) A transfer between spouses in connection with a marital dissolution;
- (4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- (5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter; and
- (6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy.

NEW SECTION. **Sec. 3.** (1) In a transaction for the sale of residential real property, the seller shall, unless the buyer has expressly waived the right to

receive the disclosure statement, or unless the transfer is exempt under section 2 of this act, deliver to the buyer a completed real property transfer disclosure statement in the following form:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than . . . days (or five days if not filled in) of mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER(S), CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT

.....
("THE PROPERTY"), LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME THIS DISCLOSURE FORM IS COMPLETED BY THE SELLER. YOU HAVE . . . BUSINESS DAYS, OR THREE BUSINESS DAYS IF NOT FILLED IN, FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER, UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT. THE FOLLOWING ARE DISCLOSURES MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN THE BUYER AND THE SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON YOUR BEHALF, FOR EXAMPLE, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, OR PEST AND DRY ROT INSPECTORS. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

*If "Yes" attach a copy or explain. If necessary use an attached sheet.

1. TITLE

- Yes No Don't know A. Do you have legal authority to sell the property?
- Yes No Don't know *B. Is title to the property subject to any of the following?
 (1) First right of refusal
 (2) Option
 (3) Lease or rental agreement
 (4) Life estate?
- Yes No Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
- Yes No Don't know *D. Are there any rights of way, easements, or access limitations that may affect the owner's use of the property?
- Yes No Don't know *E. Are there any written agreements for joint maintenance of an easement or right of way?
- Yes No Don't know *F. Is there any study, survey project, or notice that would adversely affect the property?
- Yes No Don't know *G. Are there any pending or existing assessments against the property?
- Yes No Don't know *H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the subject property that would affect future construction or remodeling?
- Yes No Don't know *I. Is there a boundary survey for the property?
- Yes No Don't know *J. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER**A. Household Water**

- (1) The source of the water is Public
 Community Private Shared
- (2) Water source information:
- Yes No Don't know *a. Are there any written agreements for shared water source?
- Yes No Don't know *b. Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
- Yes No Don't know *c. Are any known problems or repairs needed?

[]Yes []No []Don't know

*d. Does the source provide an adequate year round supply of potable water?

[]Yes []No []Don't know

*(3) Are there any water treatment systems for the property? []Leased.[]Owned

B. Irrigation

[]Yes []No []Don't know

(1) Are there any water rights for the property?

[]Yes []No []Don't know

*(2) If they exist, to your knowledge, have the water rights been used during the last five-year period?

[]Yes []No []Don't know

*(3) If so, is the certificate available?

C. Outdoor Sprinkler System

[]Yes []No []Don't know

(1) Is there an outdoor sprinkler system for the property?

[]Yes []No []Don't know

*(2) Are there any defects in the outdoor sprinkler system?

3. SEWER/SEPTIC SYSTEM

A. The property is served by: []Public sewer main, []Septic tank system []Other disposal system (describe)

[]Yes []No []Don't know

B. If the property is served by a public or community sewer main, is the house connected to the main?

C. If the property is connected to a septic system:

[]Yes []No []Don't know

(1) Was a permit issued for its construction, and was it approved by the city or county following its construction?

(2) When was it last pumped:, 19. . .

[]Yes []No []Don't know

*(3) Are there any defects in the operation of the septic system?

[]Don't know

(4) When was it last inspected?, 19. . .

[]Don't know

By Whom:
(5) How many bedrooms was the system approved for?
..... bedrooms

[]Yes []No []Don't know

*D. Do all plumbing fixtures, including laundry drain, go to the septic/sewer system? If no, explain:

[]Yes []No []Don't know

*E. Are you aware of any changes or repairs to the septic system?

[]Yes []No []Don't know

F. Is the septic tank system, including the drainfield, located entirely within the boundaries of the property?

4. STRUCTURAL

[]Yes []No []Don't know

*A. Has the roof leaked?

[]Yes []No []Don't know

If yes, has it been repaired?

[]Yes []No []Don't know

*B. Have there been any conversions, additions, or remodeling?

[]Yes []No []Don't know

*1. If yes, were all building permits obtained?

[]Yes []No []Don't know

*2. If yes, were all final inspections obtained?

[]Yes []No []Don't know

C. Do you know the age of the house? If yes, year of original construction:

.....

[]Yes []No []Don't know

*D. Do you know of any settling, slippage, or sliding of the house or other improvements? If yes, explain:

.....

[]Yes []No []Don't know

*E. Do you know of any defects with the following: (Please check applicable items)

- Foundations
- Chimneys
- Doors
- Ceilings
- Pools
- Sidewalks
- Garage Floors
- Other

- Decks
- Interior Walls
- Windows
- Slab Floors
- Hot Tub
- Outbuildings
- Exterior Walls
- Fire Alarm
- Patio
- Driveways
- Sauna
- Fireplaces
- Walkways
- Wood Stoves

[]Yes []No []Don't know

*F. Was a pest or dry rot, structural or "whole house" inspection done? When and by whom was the inspection completed?

[]Yes []No []Don't know

*G. Since assuming ownership, has your property had a problem with wood destroying organisms and/or have there been any problems with pest control, infestations, or vermin?

5. SYSTEMS AND FIXTURES

If the following systems or fixtures are included with the transfer, do they have any existing defects:

- Yes No Don't know *A. Electrical system, including wiring, switches, outlets, and service
- Yes No Don't know *B. Plumbing system, including pipes, faucets, fixtures, and toilets
- Yes No Don't know *C. Hot water tank
- Yes No Don't know *D. Garbage disposal
- Yes No Don't know *E. Appliances
- Yes No Don't know *F. Sump pump
- Yes No Don't know *G. Heating and cooling systems
- Yes No Don't know *H. Security system Owned Leased
- Yes No Don't know *I. Other

6. COMMON INTEREST

- Yes No Don't know A. Is there a Home Owners' Association? Name of Association
- Yes No Don't know B. Are there regular periodic assessments:
\$ per Month Year
 Other
- Yes No Don't know *C. Are there any pending special assessments?
- Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

- Yes No Don't know *A. Is there any settling, soil, standing water, or drainage problems on the property?
- Yes No Don't know *B. Does the property contain fill material?
- Yes No Don't know *C. Is there any material damage to the property or any of the structure from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- Yes No Don't know D. Is the property in a designated flood plain?
- Yes No Don't know E. Is the property in a designated flood hazard zone?
- Yes No Don't know *F. Are there any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property?
- Yes No Don't know *G. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property?

[] Yes [] No [] Don't know *H. Has the property ever been used as an illegal drug manufacturing site?

8. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

[] Yes [] No [] Don't know *Are there any other material defects affecting this property or its value that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

II. BUYER'S ACKNOWLEDGMENT

- A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects which are known to me/us or can be known to me/us by utilizing diligent attention and observation.
B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller.
C. Buyer (which term includes all persons signing the "buyer's acceptance" portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature.

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. YOU, THE BUYER, HAVE . . . BUSINESS DAYS (OR THREE BUSINESS DAYS IF NOT FILLED IN) FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER UNLESS YOU WAIVE THIS RIGHT OF REVOCATION.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS REAL PROPERTY TRANSFER DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE

SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The real property transfer disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential real property. The real property transfer disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

NEW SECTION. Sec. 4. Unless the buyer has expressly waived the right to receive the disclosure statement, within five business days or as otherwise agreed to, of mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer.

NEW SECTION. Sec. 5. (1) If, after the date that a seller of residential real property completes a real property transfer disclosure statement, the seller becomes aware of additional information, or an adverse change occurs which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored at least three days prior to the closing date. Unless the adverse change is corrected or repaired by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in section 4 of this act. If the closing date provided in the purchase

and sale agreement is scheduled to occur within the three-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

NEW SECTION. Sec. 6. (1) The seller of residential real property shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no personal knowledge of the error, inaccuracy, or omission. Unless the seller of residential real property has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any licensed real estate salesperson or broker involved in a residential real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no personal knowledge of the error, inaccuracy, or omission. Unless the salesperson or broker has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the salesperson or broker shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

NEW SECTION. Sec. 7. The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 8. Nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of residential real property other than the right of rescision exercised on the basis and within the time limits provided in this chapter.

NEW SECTION. Sec. 9. Sections 1 through 8 of this act shall constitute a new chapter in Title 64 RCW.

NEW SECTION. Sec. 10. This act shall take effect on January 1, 1995.

Passed the Senate March 6, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 201

[Substitute Senate Bill 6298]

LIQUOR LICENSES AND VIOLATIONS—UNDERAGE PERSONS—BOWLING ALLEYS—INTERNATIONAL EXPORT—SPECIAL OCCASION LICENSES—HOME BREW

AN ACT Relating to the improvement of the licensing and enforcement sections of the Washington State Liquor Act; amending RCW 66.20.200, 66.24.455, 66.24.490, 66.28.070, 66.28.140, 66.44.300, and 66.44.310; and adding a new section to chapter 66.24 RCW.

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

Sec. 1. RCW 66.20.200 and 1987 c 101 s 4 are each amended to read as follows:

It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by

him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service.

Sec. 2. RCW 66.24.455 and 1974 ex.s. c 65 s 1 are each amended to read as follows:

Subject to approval by the board, holders of class A, B, C, D, or H licenses may extend their premises for the sale, service and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility.

Sec. 3. RCW 66.24.490 and 1987 c 386 s 6 are each amended to read as follows:

(1) There shall be a retailer's license to be designated as a class I caterer's license; this shall be a special occasion license to be issued to the holder of a class A, C, D, or public H license to extend the privilege of selling and serving ~~((spiruous))~~ liquor ~~((by the individual glass, beer, and wine,))~~ as authorized under such a license at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than the ~~((class H))~~ licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from the liquor stocks at the licensed ~~((class H))~~ premises, and allow liquor for sale and service at such special occasion locations. ~~((Such special class I license shall be issued for a specified date and place and))~~ Upon payment of a fee of twenty-five dollars per day or, upon proper application to the liquor control board, an annual class I license may be issued to the holder of a class A, C, D, or public H license upon payment of a fee of three hundred fifty dollars.

(2) The holder of ~~((an annual))~~ a class I license shall ~~((obtain prior board approval for each event at which the class I license will be utilized. When applying for such board approval))~~, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request the class I licensee shall provide to the board all necessary or requested information concerning the society or organization which will be holding the function at which the class I license will be utilized.

(3) ~~((Upon receipt of a request for utilization of a class I license at a particular time and place, the board shall give notification of the pending request to the chief executive officer of the incorporated city or town, if the function is to be held within an incorporated city or town, or to the county legislative authority if the function is to be held outside the boundaries of incorporated cities or towns.~~

~~(4)) If attendance at the function((, for which class I license utilization approval is requested,)) will be open to the general public, ((board approval may only be given where)) the society or organization sponsoring the function ((is)) shall be within the definition of "society or organization" in RCW 66.24.375. If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, ((board approval may be given even though the sponsoring society or organization is not within the definition of "society or organization" in RCW 66.24.375.~~

~~(5) Where the applicant for either a daily or annual class I license is a class H club licensee, the board shall not issue the class I license, or approve the use of a previously issued class I license, unless the following requirements are met:~~

~~(a) The gross food sales of the class H club exceed its gross liquor sales; and~~

~~(b) The event for which the class I license will be used is hosted by a member of the class H licensed club)) then the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.~~

NEW SECTION. Sec. 4. A new section is added to chapter 66.24 RCW to read as follows:

There shall be an international export beer and wine license issued by the board to a retailer holding both a class E and class F retail license.

(1) Any beer or wine sold by the holder of this license must have been purchased from a licensed beer or wine wholesaler licensed to do business within the state of Washington.

(2) Any beer and wine sold under this license shall be intended for consumption outside the state of Washington and the United States and appropriate records shall be maintained by the licensee.

(3) A holder of both a retail class E and F retail license and this international export beer and wine license shall be considered not in violation of RCW 66.28.010.

(4) Any beer or wine sold under this license shall be sold at a price no less than the acquisition price paid by the holder of the license.

(5) The annual cost of this license shall be five hundred dollars and shall be in addition to any other retail liquor license fees paid by the licensee.

Sec. 5. RCW 66.28.070 and 1987 c 205 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed ((beer)) wholesaler or the board, and it shall be unlawful for any brewer, winery, or beer or wine wholesaler to purchase beer or wine, except from a duly licensed beer or wine wholesaler or ((beer)) importer.

(2) A beer or wine retailer licensee may purchase beer or wine from a government agency which has lawfully seized beer or wine from a licensed beer or wine retailer, or from a board-authorized retailer, or from a licensed retailer

which has discontinued business if the wholesaler has refused to accept beer or wine from that retailer for return and refund. Beer and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding either a class G or J license may only purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption, the board, or from a duly licensed beer or wine wholesaler.

Sec. 6. RCW 66.28.140 and 1981 c 255 s 2 are each amended to read as follows:

(1) An adult member of a household may remove family beer or wine from the home for exhibition or use at organized beer or wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family beer or wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the beer or wine when the exhibition or beer or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for consumption therein, and not for sale.

Sec. 7. RCW 66.44.300 and 1941 c 78 s 1 are each amended to read as follows:

Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for ~~((him))~~ the adult; or holds out such minor to be ~~((over the age of))~~ twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor.

Sec. 8. RCW 66.44.310 and 1981 1st ex.s. c 5 s 24 are each amended to read as follows:

(1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor~~(?)~~:

(a) To serve or allow to remain ~~((on the premises of any tavern, or cocktail lounge portion of any class H licensed premises,))~~ in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain ~~((on the premises of any tavern, or cocktail lounge portion of any public class H licensed premises))~~ in any area classified as off-limits to such a person, but

persons under twenty-one years of age may pass through a restricted area in a facility holding a class H club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining ((on the premises of, any tavern or cocktail lounge portion of any class H licensed premises)) in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify ~~((the various licensees, as taverns or otherwise, within the meaning of this title, except bona fide restaurants, dining rooms and cafes serving commercial food to the public shall not be classified as taverns during the hours such food service is made available to the public))~~ licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age.

Passed the Senate March 6, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 202

[Engrossed Senate Bill 6356]

CIGARETTE MACHINE LOCATIONS

AN ACT Relating to cigarette machine locations; and amending RCW 70.155.030.

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

Sec. 1. RCW 70.155.030 and 1993 c 507 s 4 are each amended to read as follows:

No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise(~~s~~). The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways.

Passed the Senate March 6, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 203

[Senate Bill 6377]

INSURANCE BROKERS AND AGENTS—COMPENSATION

AN ACT Relating to compensation of insurance brokers; and amending RCW 48.17.270, 48.18.180, 48.30.140, and 48.30.170.

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

Sec. 1. RCW 48.17.270 and 1993 c 455 s 1 are each amended to read as follows:

(1) A licensed agent may be licensed as a broker and be a broker as to insurers for which the licensee is not then appointed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing such agent. The sole relationship between a broker and an insurer as to which the licensee is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent. ~~((In a situation where an insurer has a special arrangement with respect to a particular insurance policy whereby it deals with brokers only, its appointed agents who are also licensed brokers may, with the approval of the insurer, participate in the arrangement and receive a broker's fee therefor, provided there is full disclosure of the facts to the insured or applicant for the insurance.))~~

(2) Unless the agency-insurer agreement provides to the contrary, an insurance agent licensed as a broker may, with respect to property and casualty insurance, receive the following compensation:

- (a) A commission paid by the insurer;
- (b) A fee paid by the insured; or
- (c) A combination of commission paid by the insurer and a fee paid by the insured from which a broker may offset or reimburse the insured for all or part of the fee.

If the compensation received by an agent who is also licensed as a broker and who is dealing directly with the insured includes a fee, the full amount of compensation, including an explanation of any offset or reimbursement, must be disclosed in writing, signed by the broker and the insured, and the writing must be retained by the broker for not less than five years.

Sec. 2. RCW 48.18.180 and 1947 c 79 s .18.18 are each amended to read as follows:

(1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor.

(4) This section does not apply to a fee paid to a broker by an insured as provided in RCW 48.17.270.

Sec. 3. RCW 48.30.140 and 1990 1st ex.s. c 3 s 8 are each amended to read as follows:

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270.

Sec. 4. RCW 48.30.170 and 1947 c 79 s .30.17 are each amended to read as follows:

(1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he or she is not lawfully entitled as a licensed agent, broker, or solicitor. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars.

(3) This section shall not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270.

Passed the Senate March 6, 1994.
Passed the House March 2, 1994.
Approved by the Governor March 30, 1994.
Filed in Office of Secretary of State March 30, 1994.

CHAPTER 204

[Senate Bill 6408]

MENTAL HEALTH SYSTEMS—INCLUSION OF TRIBAL AUTHORITIES

AN ACT Relating to including tribal authorities in mental health systems; and amending RCW 71.24.025 and 71.24.300.

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

Sec. 1. RCW 71.24.025 and 1991 c 306 s 2 are each amended to read as follows:

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

(1) "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 RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed 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 adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "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.

(8) "Community support services" means services for acutely mentally ill persons, chronically mentally ill adults, and severely emotionally disturbed children 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, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill adults and severely emotionally disturbed children.

(9) "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.

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

(11) "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.

(12) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and (16) of this section.

(13) "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.

(14) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

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 adults, severely emotionally disturbed children, or seriously disturbed adults 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. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter,

except for children's long-term residential facilities existing prior to January 1, 1991.

(15) "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, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding 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.

(16) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to 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.

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

(18) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 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; 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.

(19) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest.

Sec. 2. RCW 71.24.300 and 1992 c 230 s 6 are each amended 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. Upon the request of a tribal authority or authorities within a regional support network the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network. The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served. 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. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to contracts with neighboring or contiguous regions. 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, employment services as defined in RCW 71.24.035, 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. Such contracts may include agreements to provide periods of stable community living and work or other day activities for specific chronically mentally ill persons who have completed commitments at state hospitals on ninety-day or one hundred eighty-day civil commitments or who have been residents at state hospitals for no less than one hundred eighty days within the previous year. Periods of stable community living may involve acute care in local evaluation and treatment facilities but may not involve use of state hospitals.

(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 1993 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) By November 1, 1991, and as part of each biennial plan thereafter, each regional support network shall establish and submit to the state, procedures and agreements to assure access to sufficient additional local evaluation and treatment facilities to meet the requirements of this chapter while reducing short-term admissions to state hospitals. These shall be commitments to construct and operate, or contract for the operation of, freestanding evaluation and treatment facilities or agreements with local evaluation and treatment facilities which shall include (a) required admission and treatment for short-term inpatient care for any person enrolled in community support or residential services, (b) discharge planning procedures, (c) limitations on admissions or transfers to state hospitals, (d) adequate psychiatric supervision, (e) prospective payment methods, and (f) contractual assurances regarding referrals to local evaluation and treatment facilities from regional support networks.

(8) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section.

Passed the Senate March 6, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 205

[Senate Bill 6438]

RUNNING START PROGRAM—REVISED PROVISIONS

AN ACT Relating to the running start program; amending RCW 28A.600.300, 28A.600.310, 28A.600.320, 28A.600.330, 28A.600.340, 28A.600.350, 28A.600.360, 28A.600.370, 28A.600.380, 28A.600.390, and 28A.600.400; and repealing RCW 28A.600.395.

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

Sec. 1. RCW 28A.600.300 and 1990 1st ex.s. c 9 s 401 are each amended to read as follows:

~~((As used in RCW 28A.600.300 through 28A.600.390, community college means a public community college as defined in chapter 28B.50 RCW))~~ For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

- (1) A community or technical college as defined in RCW 28B.50.030; and
- (2) Central Washington University, Eastern Washington University, and Washington State University, if the institution's governing board decides to participate in the program in RCW 28A.600.310 through 28A.600.400.

Sec. 2. RCW 28A.600.310 and 1993 c 222 s 1 are each amended to read as follows:

(1) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may apply to a ~~((community college or technical college))~~ participating institution of higher education to enroll in courses or programs offered by the ~~((community college or technical college))~~ institution of higher education. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If ((a community college or technical college)) the institution of higher education accepts a secondary school pupil for enrollment under this section, the ((community college or technical college)) institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) The pupil's school district shall transmit to the ~~((community college or technical college))~~ institution of higher education an amount per each full-time equivalent college student at state-wide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated state-wide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable

rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The ~~((community college or technical college))~~ institution of higher education shall not require the pupil to pay any other fees. The funds received by the ~~((community college or technical college))~~ institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the ~~((community college or technical college))~~ institution of higher education. A student enrolled under this subsection shall not be counted for the purpose of determining any enrollment restrictions imposed by the state on the ~~((community colleges))~~ institution of higher education.

Sec. 3. RCW 28A.600.320 and 1990 1st ex.s. c 9 s 403 are each amended to read as follows:

A school district shall provide general information about the program to all pupils in grades ten ~~((and))~~, eleven, and twelve and the parents and guardians of those pupils. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in ~~((community college or a vocational-technical institute))~~ courses at an institution of higher education for credit. Students are responsible for applying for admission to the ~~((community college or vocational-technical institute))~~ institution of higher education.

Sec. 4. RCW 28A.600.330 and 1990 1st ex.s. c 9 s 404 are each amended to read as follows:

A pupil who enrolls in ~~((a community college or a vocational-technical institute))~~ an institution of higher education in grade eleven may not enroll in postsecondary courses under RCW 28A.600.300 through 28A.600.390 for high school credit and ~~((community college or vocational-technical institute))~~ postsecondary credit for more than the equivalent of the course work for two academic years. A pupil who first enrolls in ~~((a community college or vocational-technical institute))~~ an institution of higher education in grade twelve may not enroll in postsecondary courses under this section for high school credit and ~~((community college or vocational-technical institute))~~ postsecondary credit for more than the equivalent of the course work for one academic year.

Sec. 5. RCW 28A.600.340 and 1990 1st ex.s. c 9 s 405 are each amended to read as follows:

Once a pupil has been enrolled in a postsecondary course~~((;))~~ or program~~((; or vocational-technical institute))~~ under ~~((this section))~~ RCW 28A.600.300 through 28A.600.400, the pupil shall not be displaced by another student.

Sec. 6. RCW 28A.600.350 and 1990 1st ex.s. c 9 s 406 are each amended to read as follows:

A pupil may enroll in a course under RCW 28A.600.300 through 28A.600.390 for both high school credit and ~~((college-level academic and vocational or vocational-technical institute))~~ postsecondary credit.

Sec. 7. RCW 28A.600.360 and 1990 1st ex.s. c 9 s 407 are each amended to read as follows:

A school district shall grant academic credit to a pupil enrolled in a course for high school credit if the pupil successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the pupil enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of the successful completion of each course in (~~(a community college or vocational-technical institute)~~) an institution of higher education shall be included in the pupil's secondary school records and transcript. The transcript shall also note that the course was taken at (~~(a community college or vocational-technical institute)~~) an institution of higher education.

Sec. 8. RCW 28A.600.370 and 1990 1st ex.s. c 9 s 408 are each amended to read as follows:

Any state institution of higher education may award postsecondary credit for college level academic and vocational (~~(or vocational-technical institute)~~) courses successfully completed by a student while in high school and taken at (~~(a community college or vocational-technical institute)~~) an institution of higher education. The state institution of higher education shall not charge a fee for the award of the credits.

Sec. 9. RCW 28A.600.380 and 1990 1st ex.s. c 9 s 409 are each amended to read as follows:

Transportation to and from the (~~(community college or vocational-technical institute)~~) institution of higher education is not the responsibility of the school district.

Sec. 10. RCW 28A.600.390 and 1990 1st ex.s. c 9 s 410 are each amended to read as follows:

The superintendent of public instruction, the state board for community and technical colleges (~~(education)~~), and the higher education coordinating board shall jointly develop and adopt rules governing RCW 28A.600.300 through 28A.600.380, if rules are necessary. The rules shall be written to encourage the maximum use of the program and shall not narrow or limit the enrollment options under RCW 28A.600.300 through 28A.600.380.

Sec. 11. RCW 28A.600.400 and 1990 1st ex.s. c 9 s 412 are each amended to read as follows:

RCW 28A.600.300 through (~~(28A.600.395)~~) 28A.600.390 are in addition to and not intended to adversely affect agreements between school districts and (~~(community college districts or vocational-technical institutes)~~) institutions of higher education in effect on April 11, 1990, and in the future.

NEW SECTION. Sec. 12. RCW 28A.600.395 and 1990 1st ex.s. c 9 s 411 are each repealed.

Passed the Senate March 10, 1994.
 Passed the House March 10, 1994.
 Approved by the Governor March 30, 1994.
 Filed in Office of Secretary of State March 30, 1994.

CHAPTER 206

[Substitute Senate Bill 6492]

AGRICULTURAL ASSOCIATIONS' ACTIONS—MEMBERS' DISSENT

AN ACT Relating to agricultural associations; and amending RCW 23.86.007 and 23.86.145.

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

Sec. 1. RCW 23.86.007 and 1989 c 307 s 3 are each amended to read as follows:

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

(1) "Association" means any corporation subject to this chapter.

(2) "Member" or "members" includes a member or members of an association subject to this chapter without capital stock and a shareholder or shareholders of voting common stock in an association subject to this chapter with capital stock.

(3) "Articles of incorporation" means the original or restated articles of incorporation, articles of consolidation, or articles of association and all amendments including articles of merger. Corporations incorporated under this chapter with articles of association shall not be required to amend the title or references to the term "articles of association."

(4) "Director," "directors," or "board of directors" includes "trustee," "trustees," or "board of trustees" respectively. Corporations incorporated under this chapter with references in their articles of association or bylaws to "trustee," "trustees," or "board of trustees" shall not be required to amend the references.

(5) "Agricultural association" means an association that engages in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the byproducts thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies, or in the financing of these activities. In the application of the definition of agricultural association, "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products.

Sec. 2. RCW 23.86.145 and 1991 c 72 s 16 are each amended to read as follows:

(1) Except as provided otherwise under (~~subsection (2) of this section~~) this chapter, the rights and procedures set forth in chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(3) Any member of an agricultural association who exercises the right to dissent from an association action described in RCW 23.86.135 shall be entitled to payment of the member's equity interest on the same time schedule that would have applied if membership in the association had been terminated.

(4) Subsection (3) of this section does not apply to agricultural associations that are involved in an action under subsection (3) of this section before the effective date of this section: (a) As to the associations that were involved in the particular action; (b) for three years after the effective date of this section.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 207

[Engrossed Senate Bill 6493]

STATE ENERGY STRATEGY

AN ACT Relating to the state energy strategy; amending RCW 43.21F.025, 43.21F.015, and 43.21F.045; adding a new section to chapter 43.21F 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 state energy strategy presented to the legislature in 1993 was developed by a dedicated and talented committee of hard-working representatives of the industries and people of this state and that the strategy document should serve to guide energy-related policy decisions by the legislature and other entities within this region.

Sec. 2. RCW 43.21F.025 and 1987 c 330 s 501 are each amended to read as follows:

(1) "Energy" means petroleum or other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material; electricity; solar radiation; geothermal resources; hydropower; organic waste products; wind; tidal activity; any other substance or process used to produce heat, light, or motion; or the savings from nongeneration technologies, including conservation or improved efficiency in the usage of any of the sources described in this subsection;

(2) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision,

municipal corporation, government agency, public utility district, joint operating agency, or any other entity, public or private, however organized;

(3) "Director" means the director of the state energy office;

(4) "Office" means the Washington state energy office; ~~((and))~~

(5) "Distributor" means any person, private corporation, partnership, individual proprietorship, utility, including investor-owned utilities, municipal utility, public utility district, joint operating agency, or cooperative, which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state; and

(6) "State energy strategy" means the document and energy policy direction developed under section 1, chapter 201, Laws of 1991 including any related appendices.

Sec. 3. RCW 43.21F.015 and 1981 c 295 s 1 are each amended to read as follows:

It is the policy of the state of Washington that:

(1) The development and use of a diverse array of energy resources with emphasis on renewable energy resources shall be encouraged;

(2) The supply of energy shall be sufficient to insure the health and economic welfare of its citizens;

(3) The development and use of energy resources shall be consistent with the statutory environmental policies of the state;

(4) Energy conservation and elimination of wasteful and uneconomic uses of energy and materials shall be encouraged, and this conservation should include, but is not limited to, resource recovery and materials recycling;

(5) In energy emergency shortage situations, energy requirements to maintain the public health, safety, and welfare shall be given priority in the allocation of energy resources, and citizens and industry shall be assisted in adjusting to the limited availability of energy in order to minimize adverse impacts on their physical, social, and economic well being; ~~((and))~~

(6) State government shall provide a source of impartial and objective information in order that this energy policy may be enhanced; and

(7) The state energy strategy shall provide primary guidance for implementation of the state's energy policy.

Sec. 4. RCW 43.21F.045 and 1990 c 12 s 2 are each amended to read as follows:

The energy office shall have the following duties:

(1) The office shall prepare and update contingency plans for implementation in the event of energy shortages or emergencies. The plans shall conform to chapter 43.21G RCW and shall include procedures for determining when these shortages or emergencies exist, the state officers and agencies to participate in the determination, and actions to be taken by various agencies and officers of state government in order to reduce hardship and maintain the general welfare during these emergencies. The office shall coordinate the activities undertaken

pursuant to this subsection with other persons. The components of plans that require legislation for their implementation shall be presented to the legislature in the form of proposed legislation at the earliest practicable date. The office shall report to the governor and the legislature on probable, imminent, and existing energy shortages, and shall administer energy allocation and curtailment programs in accordance with chapter 43.21G RCW.

(2) The office shall establish and maintain a central repository in state government for collection of existing data on energy resources, including:

(a) Supply, demand, costs, utilization technology, projections, and forecasts;

(b) Comparative costs of alternative energy sources, uses, and applications; and

(c) Inventory data on energy research projects in the state conducted under public and/or private auspices, and the results thereof.

(3) The office shall coordinate federal energy programs appropriate for state-level implementation, carry out such energy programs as are assigned to it by the governor or the legislature, and monitor federally funded local energy programs as required by federal or state regulations.

(4) The office shall develop energy policy recommendations for consideration by the governor and the legislature.

(5) The office shall provide assistance, space, and other support as may be necessary for the activities of the state's two representatives to the Pacific northwest electric power and conservation planning council. To the extent consistent with federal law, the office shall request that Washington's council members request the administrator of the Bonneville power administration to reimburse the state for the expenses associated with the support as provided in the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501).

(6) The office shall cooperate with state agencies, other governmental units, and private interests in the prioritization and implementation of the state energy strategy elements and on other energy matters.

(7) The office shall represent the interests of the state in the siting, construction, and operation of nuclear waste storage and disposal facilities.

(8) The office shall serve as the official state agency responsible for ~~((coordination of energy-related activities))~~ coordinating implementation of the state energy strategy.

(9) No later than December 1, 1982, and by December 1st of each even-numbered year thereafter, the office shall prepare and transmit to the governor and the ~~appropriate committees of the legislature~~ a report on ~~((energy supply and demand, conservation, and other factors))~~ the implementation of the state energy strategy and other important energy issues, as appropriate.

(10) The office shall provide support for increasing cost-effective energy conservation, including assisting in the removal of impediments to timely implementation.

(11) The office shall provide support for the development of cost-effective energy resources including assisting in the removal of impediments to timely construction.

(12) The office shall adopt rules, under chapter 34.05 RCW, necessary to carry out the powers and duties enumerated in this chapter.

(13) The office shall provide administrative assistance, space, and other support as may be necessary for the activities of the energy facility site evaluation council, as provided for in RCW 80.50.030.

NEW SECTION. Sec. 5. A new section is added to chapter 43.21F RCW to read as follows:

The office shall review the state energy strategy as developed under section 1, chapter 201, Laws of 1991, periodically with the guidance of an advisory committee. For each review, an advisory committee shall be established with a membership resembling as closely as possible the original energy strategy advisory committee specified under section 1, chapter 201, Laws of 1991. Upon completion of a public hearing regarding the advisory committee's advice and recommendations for revisions to the energy strategy, a written report shall be conveyed by the office to the governor and the appropriate legislative committees. Any advisory committee established under this section shall be dissolved within three months after their written report is conveyed.

Passed the Senate March 6, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 208

[Engrossed Substitute Senate Bill 6585]

VETERANS—TUITION EXEMPTIONS

AN ACT Relating to tuition exemptions for veterans; amending RCW 28B.15.620 and 28B.15.628; amending 1991 c 164 s 11 (uncodified); and amending 1991 c 228 s 15 (uncodified).

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

Sec. 1. RCW 28B.15.620 and 1993 sp.s. c 18 s 24 are each amended to read as follows:

(1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Vietnam conflict who have served in the southeast Asia theater of operations from the payment of all or a portion of any increase in tuition and fees (~~otherwise applicable to any other resident or nonresident student. In such cases, the veteran shall not be required to pay more than the total amount of tuition and fees paid by veterans of the Vietnam conflict on~~) that occur after October 1, 1977 (~~PROVIDED, That for the purposes of this exemption, "veterans of the Vietnam conflict" shall be those~~

~~persons who have been on active federal service as a member of the armed military or naval forces of the United States between a period commencing August 5, 1964, and ending on May 7, 1975, and who qualify), if the veteran qualifies as a resident student under RCW 28B.15.012, ((and who)) was enrolled in state institutions of higher education on or before May 7, 1990, and meets the requirements of subsection (2) of this section.~~

(2) Beginning with the fall academic term of 1994, veterans receiving the exemption under subsection (1) of this section must meet these additional requirements:

(a) Remain continuously enrolled for seven or more quarter credits per academic term or their equivalent, except summer term and not including community service courses;

(b) Have an adjusted gross family income as most recently reported to the internal revenue service that does not exceed Washington state's median family income as established by the federal bureau of the census; and

(c) Have exhausted all entitlement to federal vocational or educational benefits conferred by virtue of their military service.

(3) For the purposes of this section, "veterans of the Vietnam conflict" shall be those persons who have been on active federal service as a member of the armed military or naval forces of the United States between a period commencing August 5, 1964, and ending on May 7, 1975.

(4) This section shall expire June 30, ((1995)) 1997.

Sec. 2. RCW 28B.15.628 and 1993 sp.s. c 18 s 25 are each amended to read as follows:

(1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Persian Gulf combat zone from all or a portion of increases in tuition and fees that occur ((during and after their period of service. In such cases, the veteran shall not be required to pay more than the total amount of tuition and fees established for)) after the 1990-91 academic year, if:

(a) The veteran could have qualified as a Washington resident student under RCW 28B.15.012(2), had he or she been enrolled as a student on August 1, 1990(7);

(b) The veteran is enrolled for seven or more quarter credits per academic term or their equivalent, except summer term and not including community service courses; and ((#))

(c) The veteran's adjusted gross family income as most recently reported to the internal revenue service does not exceed Washington state's median family income as established by the federal bureau of the census. For the purposes of this section, "a veteran of the Persian Gulf combat zone" means a person who during any portion of calendar year 1991, served in active federal service as a member of the armed military or naval forces of the United States in a combat zone as designated by the president of the United States by executive order.

Sec. 3. 1991 c 164 s 11 (uncodified) is amended to read as follows:
Section 2 of this act shall expire June 30, (~~(1995)~~) 1997.

Sec. 4. 1991 c 228 s 15 (uncodified) is amended to read as follows:
Sections 13 and 14 of this act shall expire June 30, (~~(1994)~~) 1997.

Passed the Senate March 6, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 209

[Substitute House Bill 2618]

FERRY ROUTES INCLUDED IN STATE HIGHWAY ROUTES

AN ACT Relating to state highway routes; amending RCW 47.17.080, 47.17.081, 47.17.175, 47.17.305, 47.17.317, 47.17.556, 47.17.560, and 47.17.735; and adding new sections to chapter 47.17 RCW.

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

Sec. 1. RCW 47.17.080 and 1973 1st ex.s. c 151 s 13 are each amended to read as follows:

A state highway to be known as state route number 20 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Discovery Bay, thence northeasterly via the most feasible route to Port Townsend; also

From the state ferry terminal at Port Townsend via the state ferry system northeasterly to the state ferry terminal at Keystone; also

From the Keystone ferry dock on Whidbey Island, thence northeasterly by the most feasible route by way of Deception Pass, Burlington, Sedro Woolley, Concrete, Newhalem, Winthrop, Twisp, Okanogan, Tonasket, Republic, Kettle Falls, Colville, and Tiger; thence southerly and southeasterly to a junction with state route number 2 at Newport.

Sec. 2. RCW 47.17.081 and 1973 1st ex.s. c 151 s 17 are each amended to read as follows:

A state highway to be known as state route number 20 north is established as follows:

Beginning at a junction with state route number 20 in the vicinity southeast of Anacortes, thence ((easterly via the most feasible route to a junction with state route number 20 southeast of Anacortes)) northwesterly to the state ferry terminal at Anacortes; also

From the state ferry terminal at Anacortes via the state ferry system to the state ferry terminals at Lopez Island, Shaw Island, Orcas Island, and Friday Harbor.

Sec. 3. RCW 47.17.175 and 1970 ex.s. c 51 s 36 are each amended to read as follows:

A state highway to be known as state route number 104 is established as follows:

Beginning at a junction with state route number 101 in the vicinity south of Discovery Bay, thence southeasterly to the vicinity of Shine on Hood Canal, thence crossing Hood Canal to a junction with state route number 3 in the vicinity of Port Gamble; also

From that junction with state route number 3 in the vicinity of Port Gamble, thence to Port Gamble, thence southerly and easterly to the state ferry terminal at Kingston; also

~~((Beginning at))~~ From the state ferry terminal at Kingston via the state ferry system easterly to the state ferry terminal at Edmonds; also

From the state ferry terminal at Edmonds, thence southeasterly to a junction with state route number 99 in the vicinity of the Snohomish-King county line; also

Beginning at a junction with state route number 99 in the vicinity of the Snohomish-King county line, thence southeasterly to a junction with state route number 522 in the vicinity of Lake Forest Park.

Sec. 4. RCW 47.17.305 and 1993 c 430 s 2 are each amended to read as follows:

A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 in the vicinity south of Port Orchard, thence easterly on Sedgwick Road to the Washington state ferry dock at Point Southworth; also

From the state ferry terminal at Point Southworth via the state ferry system easterly to the state ferry terminal at Vashon Heights; also

From the state ferry terminal at Vashon Heights easterly via the state ferry system to the state ferry terminal at Fauntleroy.

Sec. 5. RCW 47.17.317 and 1991 c 342 s 16 are each amended to read as follows:

A state highway to be known as state route number 163 is established as follows:

Beginning at a junction with state route number 16 in Tacoma, thence northerly to the Point Defiance ferry terminal; also

From the state ferry terminal at Point Defiance via the state ferry system northerly to the state ferry terminal at Tahlequah.

Sec. 6. RCW 47.17.556 and 1993 c 430 s 4 are each amended to read as follows:

A state highway to be known as state route number 304 is established as follows:

Beginning at a junction with state route number 3 in Bremerton, thence easterly to the ferry terminal in Bremerton; also

From the state ferry terminal at Bremerton via the state ferry system easterly to the junction with state route number 519 at the state ferry terminal in Seattle.

Sec. 7. RCW 47.17.560 and 1970 ex.s. c 51 s 113 are each amended to read as follows:

A state highway to be known as state route number 305 is established as follows:

Beginning at the ~~((ferry terminal in Winslow))~~ junction with state route number 519 at the state ferry terminal in Seattle, thence via the state ferry system northwesterly to the state ferry terminal at Bainbridge Island; also

From the state ferry terminal at Bainbridge Island, thence northerly by the most feasible route to the north end of Bainbridge Island, across Agate Pass, thence northwesterly by the most feasible route to a junction with state route number 3 in the vicinity north of Poulsbo.

Sec. 8. RCW 47.17.735 and 1973 1st ex.s. c 151 s 15 are each amended to read as follows:

A state highway to be known as state route number 525 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence northwesterly to the state ferry terminal at Mukilteo; also

~~((Beginning at the vicinity of Columbia Beach in the southern portion of Whidbey Island))~~ From the state ferry terminal at Mukilteo via the state ferry system northerly to the state ferry terminal at Clinton; also

From the state ferry terminal at Clinton, thence northwesterly to a junction with state route number 20 in the vicinity east of Keystone.

NEW SECTION. **Sec. 9.** A new section is added to chapter 47.17 RCW to read as follows:

A state highway to be known as state route number 339 is established as follows:

Beginning at the junction of state route number 160 at the state ferry terminal at Vashon Heights, thence via the state ferry system northeasterly to the junction with state route number 519 at the state ferry terminal in Seattle.

NEW SECTION. **Sec. 10.** A new section is added to chapter 47.17 RCW to read as follows:

Nothing in this chapter precludes the refund of all vehicle license fees and motor vehicle fuel tax directly or indirectly paid by the residents of those counties composed entirely of islands and that have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, as authorized under RCW 46.68.080.

Passed the House February 4, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CHAPTER 210

[Substitute House Bill 1159]

LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION—INTIMIDATION

AN ACT Relating to improper governmental action; amending RCW 42.41.020; and adding a new section to chapter 42.41 RCW.

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

Sec. 1. RCW 42.41.020 and 1992 c 44 s 2 are each amended to read as follows:

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

(1)(a) "Improper governmental action" means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local 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 local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

(2) "Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to cities, counties, school districts, and special purpose districts.

(3) "Retaliatory action" means: (a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or

(b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

(4) "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

NEW SECTION. Sec. 2. A new section is added to chapter 42.41 RCW to read as follows:

(1) A local government official or employee may not use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter.

(2) Nothing in this section authorizes an individual to disclose information prohibited by law.

Passed the House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 211

[Second Substitute House Bill 1235]

LIMITED LIABILITY COMPANIES

AN ACT Relating to partnerships; amending RCW 24.03.045, 24.03.047, 24.06.045, 24.06.047, 25.10.020, 43.07.120, 43.07.130, 18.04.025, and 18.04.195; reenacting and amending RCW 23B.04.010; adding a new chapter to Title 25 RCW; adding a new chapter to Title 18 RCW; and providing an effective date.

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

ARTICLE I. GENERAL PROVISIONS

NEW SECTION. Sec. 101. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Certificate of formation" means the certificate referred to in section 201 of this act, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in section 304 of this act.

(3) "Foreign limited liability company" means an entity that is:

(a) An unincorporated enterprise;

(b) Organized under the laws of a state other than the laws of this state, or under the laws of any foreign country;

(c) Organized under a statute pursuant to which an enterprise may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) Is not required, in order to transact business or conduct affairs in this state, to be registered or organized under any statute of this state other than this chapter.

(4) "Limited liability company" and "domestic limited liability company" means a limited liability company organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement as to the affairs of a limited liability company and the conduct of its business which is binding upon all of the members.

(6) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(7) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with section 401(2) of this act.

(8) "Member" means a person who has been admitted to a limited liability company as a member as provided in section 301 of this act and who has not been dissociated from the limited liability company.

(9) "Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

(10) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to section 109 of this act.

(11) "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization, including, but not by way of limitation, certified public accountants, architects, veterinarians, attorneys at law, and health professions regulated under chapter 18.130 RCW.

(12) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington.

NEW SECTION. Sec. 102. NAME SET FORTH IN CERTIFICATE OF FORMATION. (1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain either the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C.;"

(b) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(c) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by section 106 of this act;

(d) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or "inc.," or "L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(e) Must be distinguishable upon the records of the secretary of state from the names described in RCW 23B.04.010(1)(d), and the names of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(e) of this section. The secretary of state shall authorize use of the name applied for if the other corporation, limited partnership, or limited liability company consents in writing to the use and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names."

NEW SECTION. Sec. 103. RESERVED NAME—REGISTERED NAME.

(1) Reserved Name.

(a) A person may reserve the exclusive use of a limited liability company name 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 limited liability company 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.

(b) The owner of a reserved limited liability company 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.

(2) Registered Name.

(a) A foreign limited liability company may register its name if the name is distinguishable upon the records of the secretary of state from the names specified in section 102(1)(e) of this act.

(b) A foreign limited liability company registers its name by delivering to the secretary of state for filing an application that:

(i) Sets forth its name and the state or country and date of its organization; and

(ii) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of organization.

(c) 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.

(d) A foreign limited liability company 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 (b) of this subsection, between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name, or consent in writing to the use of that name by a limited liability company thereafter organized under this chapter, by a corporation thereafter formed under Title 23B RCW, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign limited liability company, foreign corporation, or foreign limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic limited liability company is organized, the domestic corporation is incorporated, or the domestic limited partnership is formed, or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company, corporation, or limited partnership under the registered name.

NEW SECTION. Sec. 104. REGISTERED OFFICE—REGISTERED AGENT. (1) Each limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this state whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

(2) A registered agent may change the address of the registered office of the limited liability company or companies for which such registered agent is registered agent to another address in this state by filing with the secretary of state a certificate, executed by such registered agent, setting forth the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies recited in the certificate. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the same, and thereafter, or until further change of address, as authorized by law, the registered office in this state of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the secretary of state a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the certificate. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under section 202 of this act. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(3) The registered agent of one or more limited liability companies may resign and appoint a successor registered agent by filing a certificate with the

secretary of state, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in this state. The secretary of state shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under section 202 of this act.

(4) The registered agent of a limited liability company may resign without appointing a successor registered agent by filing a certificate with the secretary of state stating that it resigns as registered agent for the limited liability company identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, that at least thirty days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the limited liability company for which such registered agent is resigning as registered agent, at the principal office thereof within or outside this state, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning.

NEW SECTION. **Sec. 105. SERVICE OF PROCESS ON DOMESTIC LIMITED LIABILITY COMPANIES.** (1) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(2) The secretary of state shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(a) The limited liability company 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 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 limited liability company at its principal place of business as it appears 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 limited liability company in any other manner now or hereafter permitted by law.

NEW SECTION. Sec. 106. NATURE OF BUSINESS PERMITTED—
POWERS. (1) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of banking or engaging in business as an insurer.

(2) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

NEW SECTION. Sec. 107. BUSINESS TRANSACTIONS OF MEMBER OR MANAGER WITH THE LIMITED LIABILITY COMPANY. Except as provided in a limited liability company agreement, a member or manager may lend money to, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

NEW SECTION. Sec. 108. LIMITATION OF LIABILITY AND INDEMNIFICATION. (1) The limited liability company agreement may contain provisions not inconsistent with law that:

(a) Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions shall not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, for conduct of the member or manager, violating section 605 of this act, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or

(b) Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because he or she is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, conduct of the member or manager adjudged to be in violation of section 605 of this act, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.

(2) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

NEW SECTION. Sec. 109. PROFESSIONAL LIMITED LIABILITY COMPANIES. (1) A person or group of persons licensed or otherwise legally authorized to render professional services within this state may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Notwithstanding RCW 18.100.065, persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as:

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

(b) Each resident manager or member in charge of an office of the company in this state and each resident manager or member personally engaged in this

state in the practice of the profession is duly licensed or otherwise legally authorized to practice the profession in this state.

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

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

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

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

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

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

NEW SECTION. Sec. 110. MEMBER AGREEMENTS. In addition to agreeing among themselves with respect to the provisions of this chapter, the members of a limited liability company or professional limited liability company may agree among themselves to any otherwise lawful provision governing the company which is not in conflict with this chapter. Such agreements include, but

are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members.

NEW SECTION. Sec. 111. MEMBERSHIP RESIDENCY. Nothing in this chapter requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business in this state.

NEW SECTION. Sec. 112. PIERCING THE VEIL. Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil.

ARTICLE II. FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

NEW SECTION. Sec. 201. CERTIFICATE OF FORMATION. (1) In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the secretary of state and set forth:

- (a) The name of the limited liability company;
- (b) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 104 of this act;
- (c) The address of the principal place of business of the limited liability company;
- (d) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;
- (e) If management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (f) Any other matters the members decide to include therein; and
- (g) The name and address of each person executing the certificate of formation.

(2) Effect of filing:

(a) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the secretary of state. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.

(b) The secretary of state's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation except in a proceeding by the state to cancel the certificate.

(c) A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

NEW SECTION. Sec. 202. AMENDMENT TO CERTIFICATE OF FORMATION. (1) A certificate of formation is amended by filing a certificate of amendment thereto with the secretary of state. The certificate of amendment shall set forth:

- (a) The name of the limited liability company; and
- (b) The amendment to the certificate of formation.

(2) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(3) A certificate of formation may be amended at any time for any other proper purpose.

(4) Unless otherwise provided in this chapter or unless a later effective date (which shall be a date not later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed by the secretary of state.

NEW SECTION. Sec. 203. CANCELLATION OF CERTIFICATE. A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in section 805 of this act, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its certificate of formation;
- (3) The reason for filing the certificate of cancellation;

(4) The future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the person filing the certificate of cancellation determines.

NEW SECTION. Sec. 204. EXECUTION. (1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(b) A reservation of name may be signed by any person;

(c) A transfer of reservation of name must be signed by the applicant for the reserved name;

(d) A registration of name must be signed by any member or manager of the foreign limited liability company;

(e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(f) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to section 806(1) of this act;

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.

(2) Any person may sign a certificate, articles of merger, or limited liability company agreement by an attorney-in-fact, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

NEW SECTION. Sec. 205. EXECUTION, AMENDMENT, OR CANCELLATION BY JUDICIAL ORDER. (1) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

(2) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the limited liability company agreement or amendment thereof. If the court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

NEW SECTION. Sec. 206. FILING. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter shall be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(a) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(b) Retain the signed original in the secretary of state's files; and

(c) Return the duplicate copy to the person who filed it or the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the secretary of state subsequently determines that:

(a) The documents as delivered conform to the filing provisions of this chapter; or

(b) Within twenty days after notification of nonconformance is given by the secretary of state to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(3) If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (2)(b) of this section, the documents shall not be filed.

(4) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in section 805 of this act, the certificate of formation is canceled.

NEW SECTION. Sec. 207. RESTATED CERTIFICATE. (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the secretary of state one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of

the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in section 206 of this act in the office of the secretary of state. If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in section 206 of this act in the office of the secretary of state.

(3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the secretary of state, and the future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

NEW SECTION. Sec. 208. (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing, both initial and annual reports that set forth:

(a) The name of the company and the state or country under whose law it is organized;

(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 company, the address of its principal office in the state or country under the laws of which it is organized;

(d) The address of the principal place of business of the company in this state;

(e) The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers; and

(f) A brief description of the nature of its business.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.

(3) A company's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must be delivered to the secretary of state on a date determined by the secretary of state, and at such additional times as the company elects.

ARTICLE III. MEMBERS

NEW SECTION. **Sec. 301. ADMISSION OF MEMBERS.** (1) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) The formation of the limited liability company; or

(b) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(2) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(b) In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in section 704(1) of this act, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company.

NEW SECTION. Sec. 302. VOTING AND CLASSES OF MEMBER-SHIP. (1) Except as provided in this chapter, or in the limited liability company agreement, and subject to subsection (2) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or required to be made, by all members shall be necessary for actions requiring member approval.

(2) Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members shall be required to:

(a) Amend the limited liability company agreement; or

(b) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.

(5) A limited liability company agreement which contains provisions related to voting rights of members may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

NEW SECTION. Sec. 303. LIABILITY OF MEMBERS AND MANAGERS TO THIRD PARTIES. (1) Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a

limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(2) A member or manager of a limited liability company is personally liable for his or her own torts.

NEW SECTION. Sec. 304. EVENTS OF DISSOCIATION. (1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member as provided in section 702(2)(b) of this act following an assignment of all the member's limited liability company interest;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;

(g) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member

that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(h) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(i) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(2) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) Unless otherwise provided in the limited liability company agreement, a member may withdraw from a limited liability company at any time by giving thirty days' written notice to the other members.

NEW SECTION. Sec. 305. RECORDS AND INFORMATION. (1) A limited liability company shall keep at its principal place of business the following:

(a) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(b) A copy of its certificate of formation and all amendments thereto;

(c) A copy of its current limited liability company agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;

(d) Unless contained in its certificate of formation or limited liability company agreement, a written statement of:

(i) The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and

(iii) Any right of any member to receive distributions which include a return of all or any part of the member's contribution.

(e) A copy of the limited liability company's federal, state, and local tax returns and reports, if any, for the three most recent years; and

(f) A copy of any financial statements of the limited liability company for the three most recent years.

(2) The records required by subsection (1) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.

(3) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a purpose reasonably related to his or her position as a manager.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(5) Any action to enforce any right arising under this section shall be brought in the superior courts.

NEW SECTION. Sec. 306. REMEDIES FOR BREACH OF LIMITED LIABILITY COMPANY AGREEMENT BY MEMBER. A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

ARTICLE IV. MANAGEMENT AND MANAGERS

NEW SECTION. Sec. 401. MANAGEMENT. (1) Unless the certificate of formation vests management of the limited liability company in a manager or managers, management of the business or affairs of the limited liability company shall be vested in the members. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(2) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or required to be made, by all members at the time of such action;

(b) Need not be members of the limited liability company or natural persons; and

(c) Unless they have been earlier removed or have earlier resigned, shall hold office until their successors shall have been elected and qualified.

(3) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

NEW SECTION. Sec. 402. LIABILITY OF MANAGERS AND MEMBERS. Unless otherwise provided in the limited liability company agreement:

(1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.

(2) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by him or her without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from (a) any transaction connected with the conduct or winding up of the limited liability company or (b) any use by him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member.

NEW SECTION. Sec. 403. MANAGER-MEMBERS' RIGHTS AND DUTIES. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his or her participation in the limited liability company as a member.

NEW SECTION. Sec. 404. VOTING AND CLASSES OF MANAGERS.
(1) Unless the limited liability company agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers shall be required to decide any matter connected with the business and affairs of the limited liability company.

(2) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(3) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(4) A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

NEW SECTION. Sec. 405. REMEDIES FOR BREACH OF LIMITED LIABILITY COMPANY AGREEMENT BY MANAGER. A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

NEW SECTION. Sec. 406. RELIANCE ON REPORTS AND INFORMATION BY MEMBER OR MANAGER. In discharging the duties of a manager or a member, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

NEW SECTION. Sec. 407. RESIGNATION OF MANAGER. A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written

notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

ARTICLE V. FINANCE

NEW SECTION. **Sec. 501. FORM OF CONTRIBUTION.** The contribution of a member to a limited liability company may be made in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

NEW SECTION. **Sec. 502. LIABILITY FOR CONTRIBUTION.** (1) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contribution that has not been made. This option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(2) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept under section 305 of this act reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(3) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of,

such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence.

NEW SECTION. Sec. 503. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or required to be made, by each member.

NEW SECTION. Sec. 504. ALLOCATION OF DISTRIBUTIONS. Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or required to be made, by each member.

ARTICLE VI. DISTRIBUTIONS AND RESIGNATION

NEW SECTION. Sec. 601. INTERIM DISTRIBUTIONS. Except as provided in this article, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's dissociation from the limited liability company and before the dissolution and winding up thereof.

NEW SECTION. Sec. 602. DISTRIBUTION ON EVENT OF DISSOCIATION. Upon the occurrence of an event of dissociation under section 304 of this act which does not cause dissolution (other than an event of dissociation specified in section 304(2) of this act where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which the member (or assignee) is entitled under the limited liability company agreement and, if not otherwise provided in a limited liability company agreement, the member (or the member's assignee) is entitled to receive, within a reasonable time after dissociation, the fair value of the member's limited liability company interest as of the date of the

dissociation based upon the member's right to share in distributions from the limited liability company.

NEW SECTION. Sec. 603. DISTRIBUTION IN-KIND. Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in-kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited liability company.

NEW SECTION. Sec. 604. RIGHT TO DISTRIBUTION. Subject to sections 605 and 807 of this act, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

NEW SECTION. Sec. 605. LIMITATIONS ON DISTRIBUTION. (1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution (a) the limited liability company would not be able to pay its debts as they became due in the usual course of business, or (b) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(2) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other

applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

ARTICLE VII. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

NEW SECTION. Sec. 701. NATURE OF LIMITED LIABILITY COMPANY INTEREST—CERTIFICATE OF INTEREST. (1) A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(2) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

NEW SECTION. Sec. 702. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTEREST. (1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) As provided in a limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(3) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(a) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(b) The death of a member who is an individual shall be deemed to be an assignment of that member's entire limited liability company interest to his or her personal representative;

(c) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

NEW SECTION. Sec. 703. RIGHTS OF JUDGMENT CREDITOR. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

NEW SECTION. Sec. 704. RIGHT OF ASSIGNEE TO BECOME MEMBER. (1) An assignee of a limited liability company interest may become a member upon:

(a) The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) Compliance with any procedure provided for in the limited liability company agreement.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in section 502 of this act, and for the obligations of his or her assignor under article VI of this chapter.

(3) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under articles V and VI of this chapter.

ARTICLE VIII. DISSOLUTION

NEW SECTION. Sec. 801. DISSOLUTION. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) The date specified in a limited liability company agreement, or thirty years from the date of the formation of the limited liability company if no such date is set forth in the limited liability company agreement;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) An event of dissociation of a member, unless the business of the limited liability company is continued either by the consent of all the remaining members within ninety days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement;

(5) The entry of a decree of judicial dissolution under section 802 of this act;

(6) At any time there are fewer than two members unless, within ninety days following the event of dissociation upon which the number of members is reduced below two, one or more additional members are admitted so that there are at least two members; or

(7) The expiration of two years after the effective date of dissolution under section 804 of this act without the reinstatement of the limited liability company.

NEW SECTION. Sec. 802. JUDICIAL DISSOLUTION. On application by or for a member or manager the superior courts may decree dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or (2) other circumstances render dissolution equitable.

NEW SECTION. Sec. 803. ADMINISTRATIVE DISSOLUTION—COMMENCEMENT OF PROCEEDING. The secretary of state may commence a proceeding under section 804 of this act to administratively dissolve a limited liability company if:

(1) The limited liability company is without a registered agent or registered office in this state for sixty days or more; or

(2) The limited liability company 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.

NEW SECTION. Sec. 804. ADMINISTRATIVE DISSOLUTION—NOTICE—OPPORTUNITY TO CORRECT DEFICIENCIES. (1) If the secretary of state determines that one or more grounds exist under section 803 of this act for dissolving a limited liability company, the secretary of state shall give the limited liability company written notice of the determination by first class mail, postage prepaid, reciting the grounds therefor. Notice shall be sent

to the address of the principal place of business of the limited liability company as it appears in the records of the secretary of state.

(2) If the limited liability company 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 sent, the limited liability company is thereupon dissolved. The secretary of state shall give the limited liability company written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

(4) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

NEW SECTION. Sec. 805. ADMINISTRATIVE DISSOLUTION—REINSTATEMENT—APPLICATION—WHEN EFFECTIVE. (1) A limited liability company administratively dissolved under section 804 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 limited liability company 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 limited liability company's name satisfies the requirements of section 102 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 limited liability company and give the limited liability company written notice, as provided in section 804(1) of this act, of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

(4) If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company's certificate of formation.

NEW SECTION. Sec. 806. WINDING UP. (1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person

approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The superior courts, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 203 of this act, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.

NEW SECTION. Sec. 807. DISTRIBUTION OF ASSETS. (1) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 601 or 604 of this act;

(b) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 601 or 604 of this act; and

(c) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent

of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

ARTICLE IX. FOREIGN LIMITED LIABILITY COMPANIES

NEW SECTION. **Sec. 901. LAW GOVERNING.** (1) Subject to the Constitution of the state of Washington:

(a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company is subject to section 106 of this act.

(3) A foreign limited liability company and its members and managers doing business in this state thereby submit to personal jurisdiction of the courts of this state and are subject to section 303 of this act.

NEW SECTION. **Sec. 902. REGISTRATION REQUIRED—APPLICATION.** Before doing business in this state, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall submit to the secretary of state, an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in this state;

(2) The state, territory, possession, or other jurisdiction or country where formed, the date of its formation and a duly authenticated statement from the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 904(2) of this act;

(5) The address of the principal place of business of the foreign limited liability company;

(6) A statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 910(2) of this act; and

(7) The date on which the foreign limited liability company first did, or intends to do, business in this state.

NEW SECTION. Sec. 903. ISSUANCE OF REGISTRATION. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary shall:

(a) Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File the endorsed application.

(2) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or that person's representative.

NEW SECTION. Sec. 904. NAME—REGISTERED OFFICE—REGISTERED AGENT. (1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010(1)(d), and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific

geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the registered agent is registered agent to another address in this state by filing with the secretary of state a certificate, executed by such registered agent, setting forth the names of all the foreign limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such foreign limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies recited in the certificate. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the same, and thereafter, or until further change of address, as authorized by law, the registered office in this state of each of the foreign limited liability companies recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the secretary of state a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the foreign limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such foreign limited liability companies. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the same. Filing a certificate under this section shall be deemed to be an amendment of the application for registration of each foreign limited liability company affected thereby and each foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application under

section 905 of this act. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(4) The registered agent of one or more foreign limited liability companies may resign and appoint a successor registered agent by filing a certificate with the secretary of state, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability company as has ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in this state. The secretary of state shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the application for registration of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application under section 905 of this act.

(5) The registered agent of a foreign limited liability company may resign without appointing a successor registered agent by filing a certificate with the secretary of state stating that it resigns as registered agent for the foreign limited liability company identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof if a corporation, that at least thirty days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the foreign limited liability companies for which such registered agent is resigning as registered agent, at the principal office thereof within or outside this state, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such foreign limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of one hundred twenty days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in this state and its registration shall be deemed to be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal

process against the foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the secretary of state in accordance with section 911 of this act.

NEW SECTION. Sec. 905. AMENDMENTS TO APPLICATION. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the secretary of state a certificate, executed by any member or manager, correcting such statement.

NEW SECTION. Sec. 906. CANCELLATION OF REGISTRATION. (1) A foreign limited liability company may cancel its registration by filing with the secretary of state a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

- (2) The certificate of cancellation shall set forth:
- (a) The name of the foreign limited liability company;
 - (b) The date of filing of its certificate of registration;
 - (c) The reason for filing the certificate of cancellation;
 - (d) The future effective date (not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon filing of the certificate;
 - (e) The address to which service of process may be forwarded; and
 - (f) Any other information the person filing the certificate of cancellation desires.

NEW SECTION. Sec. 907. DOING BUSINESS WITHOUT REGISTRATION. (1) A foreign limited liability company doing business in this state may not maintain any action, suit, or proceeding in this state until it has registered in this state, and has paid to this state all fees and penalties for the years or parts thereof, during which it did business in this state without having registered.

(2) The failure of a foreign limited liability company to register in this state does not impair:

- (a) The validity of any contract or act of the foreign limited liability company;
- (b) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
- (c) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in this state without registration.

NEW SECTION. Sec. 908. FOREIGN LIMITED LIABILITY COMPANIES DOING BUSINESS WITHOUT HAVING QUALIFIED—INJUNCTIONS.

The superior courts shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in this state if such foreign limited liability company has failed to register under this article or if such foreign limited liability company has secured a certificate of registration from the secretary of state under section 903 of this act on the basis of false or misleading representations. The secretary of state shall, upon the secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

NEW SECTION. Sec. 909. TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS. (1) The following activities, among others, do not constitute transacting business within the meaning of this article:

(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 members, or managers if any, or carrying on other activities concerning internal limited liability company 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 foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;

(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;

(l) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;

(m) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or

(n) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

(2) The list of activities in subsection (1) of this section is not exhaustive.

NEW SECTION. Sec. 910. SERVICE OF PROCESS ON REGISTERED FOREIGN LIMITED LIABILITY COMPANIES. (1) A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(2) The secretary of state shall be an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:

(a) The foreign limited liability company 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 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 foreign limited liability company at the address of its principal place of business as it appears 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 foreign limited liability company in any other manner now or hereafter permitted by law.

NEW SECTION. Sec. 911. SERVICE OF PROCESS ON UNREGISTERED FOREIGN LIMITED LIABILITY COMPANIES. (1) Any foreign limited liability company which shall do business in this state without having registered under section 902 of this act shall be deemed to have thereby appointed and constituted the secretary of state its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any state or federal court in this state arising or growing out of any business done by it within this state. The doing of business in this state by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon a registered agent personally within this state.

(2) In the event of service upon the secretary of state in accordance with subsection (1) of this section, the secretary of state shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the secretary of state by the plaintiff in such action, suit, or

proceeding. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this subsection.

ARTICLE X. DERIVATIVE ACTIONS

NEW SECTION. Sec. 1001. RIGHT TO BRING ACTION. A member may bring an action in the superior courts in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

NEW SECTION. Sec. 1002. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a member at the time of bringing the action and:

- (1) At the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member had devolved upon him or her by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

NEW SECTION. Sec. 1003. COMPLAINT. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

NEW SECTION. Sec. 1004. EXPENSES. If a derivative action is successful, in whole or in part, as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from any recovery in any such action or from a limited liability company.

ARTICLE XI. MERGERS

NEW SECTION. Sec. 1101. MERGER—PLAN—EFFECTIVE DATE.
(1) One or more domestic limited liability companies may merge with one or more domestic limited partnerships, domestic limited liability companies, or domestic corporations pursuant to a plan of merger approved or adopted as provided in section 1102 of this act.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, limited partnership, and corporation planning to merge and the name of the surviving limited liability company, limited partnership, or corporation into which the other limited liability company, limited partnership, or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each limited partnership, and the shares of each corporation party to the merger into the interests, shares,

obligations, or other securities of the surviving or any other limited liability company, limited partnership, or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of formation of the surviving limited liability company;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership;

(c) Amendments to the articles of incorporation of the surviving corporation; and

(d) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

NEW SECTION. Sec. 1102. MERGER—PLAN—APPROVAL. (1) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 305 of this act) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.810.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

NEW SECTION. Sec. 1103. ARTICLES OF MERGER—FILING. After a plan of merger is approved or adopted, the surviving limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any members, partners, or shareholders of one or more limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any members, partners, or shareholders of one or more of the limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such

members, partners, and shareholders pursuant to section 1102 of this act, RCW 25.10.810, or chapter 23B.11 RCW.

NEW SECTION. Sec. 1104. EFFECT OF MERGER. (1) When a merger takes effect:

(a) Every other limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving limited liability company, limited partnership, or corporation and the separate existence of every limited liability company, limited partnership, or corporation except the surviving limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each limited liability company, limited partnership, and corporation party to the merger is vested in the surviving limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving limited liability company, limited partnership, or corporation has all liabilities of each limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving limited liability company, limited partnership, or corporation may be substituted in the proceeding for the limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under RCW 25.10.900 through 25.10.955, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under section 806 of this act or pay its liabilities and distribute its assets under section 807 of this act.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470.

NEW SECTION. Sec. 1105. MERGER—FOREIGN AND DOMESTIC.

(1) One or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with section 1103 of this act;

(c) Each domestic limited liability company complies with section 1102 of this act;

(d) Each domestic limited partnership complies with RCW 25.10.810; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

ARTICLE XII. DISSENTERS' RIGHTS

NEW SECTION. Sec. 1201. DEFINITIONS. As used in this article, unless the context otherwise requires:

(1) "Limited liability company" means the domestic limited liability company in which the dissenter holds or held a membership interest, or the surviving limited liability company, limited partnership, or corporation by merger, whether foreign or domestic, of that limited liability company.

(2) "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

NEW SECTION. Sec. 1202. MEMBER—DISSENT—PAYMENT OF FAIR VALUE. (1) Except as provided in section 1204 or 1206(2) of this act,

a member of a domestic limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by section 1101 or 1105 of this act.

(2) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.800 through 25.10.840, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(3) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger;
or

(c) The member's demand for payment is withdrawn with the written consent of the limited liability company.

NEW SECTION. Sec. 1203. DISSENTERS' RIGHTS—NOTICE—TIMING. (1) Not less than ten days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited liability company shall notify in writing all members not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 1205 of this act.

NEW SECTION. Sec. 1204. MEMBER—DISSENT—VOTING RESTRICTION. A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this section is not entitled to payment for the member's interest in the limited liability company under this article.

NEW SECTION. Sec. 1205. MEMBERS—DISSENTERS' NOTICE—REQUIREMENTS. (1) If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who satisfied the requirements of section 1204 of this act.

(2) The dissenters' notice required by section 1203(2) of this act or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(a) State where the payment demand must be sent;

(b) Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by section 1207 of this act after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article.

NEW SECTION. Sec. 1206. MEMBER—PAYMENT DEMAND—ENTITLEMENT. (1) A member of a limited liability company who demands payment retains all other rights of a member of such company until the proposed merger becomes effective.

(2) A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article.

NEW SECTION. Sec. 1207. MEMBER'S INTERESTS—TRANSFER RESTRICTION. The limited liability company agreement may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

NEW SECTION. Sec. 1208. PAYMENT OF FAIR VALUE—REQUIREMENTS FOR COMPLIANCE. (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited liability company shall pay each dissenter who complied with section 1206 of this act the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of the financial statements for the limited liability company for its most recent fiscal year;

(b) An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article.

NEW SECTION. Sec. 1209. MERGER—NOT EFFECTIVE WITHIN SIXTY DAYS—TRANSFER RESTRICTIONS. (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited liability company shall release any transfer restrictions imposed as permitted by section 1207 of this act.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a new dissenters' notice as

provided in sections 1203(2) and 1205 of this act and repeat the payment demand procedure.

NEW SECTION. Sec. 1210. DISSENTER'S ESTIMATE OF FAIR VALUE—NOTICE. (1) A dissenting member may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 1208 of this act, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;

(b) The limited liability company fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by section 1207 of this act within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited liability company made payment for the dissenter's interest in the limited liability company.

NEW SECTION. Sec. 1211. UNSETTLED DEMAND FOR PAYMENT—PROCEEDING—PARTIES—APPRAISERS. (1) If a demand for payment under section 1206 of this act remains unsettled, the limited liability company shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited liability company shall commence the proceeding in the superior court. If the limited liability company is a domestic limited liability company, it shall commence the proceeding in the county where its registered office is maintained.

(3) The limited liability company 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 membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company, complied with the provisions of this article. If the

court determines that such member has not complied with the provisions of this article, the member shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company.

NEW SECTION. Sec. 1212. UNSETTLED DEMAND FOR PAYMENT— COSTS—FEES AND EXPENSES OF COUNSEL. (1) The court in a proceeding commenced under section 1211 of this act shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of this article; or

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

ARTICLE XIII. MISCELLANEOUS

NEW SECTION. Sec. 1301. CONSTRUCTION AND APPLICATION OF CHAPTER AND LIMITED LIABILITY COMPANY AGREEMENT. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter and do not constitute part of the law.

NEW SECTION. Sec. 1302. ESTABLISHMENT OF FILING FEES AND MISCELLANEOUS CHARGES. (1) The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

(a) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;

(b) Filing of a certificate of cancellation for a domestic or foreign limited liability company;

(c) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;

(d) Filing an application to reserve, register, or transfer a limited liability company name;

(e) Filing any other certificate, statement, or report authorized or permitted to be filed;

(f) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(2) In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Title 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings shall be as provided for in RCW 23B.01.220.

(3) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law.

NEW SECTION. Sec. 1303. AUTHORITY TO ADOPT RULES. The secretary of state shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter.

Sec. 1304. RCW 23B.04.010 and 1991 c 269 s 36 and 1991 c 72 s 32 are each reenacted and amended to read as follows:

(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 RCW 23B.03.010 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 of the 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 RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(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 25.08 or 25.10 RCW; and

(vi) The name of any limited liability company organized or registered under chapter 25.— RCW (sections 101 through 1303 and 1312 through 1314) of this act.

(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, company, 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, or of another domestic or foreign limited liability company, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation, limited liability company, or limited partnership; 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."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

Sec. 1305. RCW 24.03.045 and 1989 c 291 s 10 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 foreign or domestic limited liability company on file with the secretary of 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 liability company, 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.

Sec. 1306. RCW 24.03.047 and 1993 c 356 s 2 are each amended to read as follows:

Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, the name of any domestic limited liability company organized under the laws of this state, the name of any foreign limited liability company authorized to transact business in this state, the name of any limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or country under the laws of which it is incorporated, [and] the date of its incorporation, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or country or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state the applicable registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed.

Sec. 1307. RCW 24.06.045 and 1987 c 55 s 41 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 existing under any act of this state, or any foreign corporation authorized to transact business or conduct affairs in this state under any act of this state, or the name of any limited liability corporation organized or authorized to transact business under any act of this state, the name of a domestic or foreign limited partnership on file with the secretary, 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 liability company, 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) The name of any corporation formed under this section shall not include nor end with "incorporated", "company", or "corporation" or any abbreviation thereof, but may use "club", "league", "association", "services", "committee", "fund", "society", "foundation", "., a nonprofit mutual corporation", or any name of like import.

Sec. 1308. RCW 24.06.047 and 1993 c 356 s 14 are each amended to read as follows:

Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, the name of any domestic limited liability company organized under the laws of this state, or the name of any foreign limited liability company authorized to transact business in this state, the name of any domestic or foreign limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or country under the laws of which it is incorporated, and the date of its incorporation, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or country wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state the applicable annual registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed.

Sec. 1309. RCW 25.10.020 and 1991 c 269 s 1 are each amended to read as follows:

(1) The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

(a) Shall contain the words "limited partnership" or the abbreviation "L.P.";

(b) May not contain the name of a limited partner unless (i) it is also the name of a general partner, or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) May not contain any of the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more of the words

"building", "savings", "loan", "home", "association" and "society"; or any other words or phrases prohibited by any statute of this state;

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The name or reserved name of a foreign or domestic limited partnership;

(ii) The corporate name of a corporation incorporated or authorized to transact business in this state;

(iii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iv) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable; ~~(and)~~

(v) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(vi) The name of a limited liability company organized or authorized to transact business in this state.

(2) A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other limited partnership, corporation, or holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited partnership; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A limited partnership may use the name, including the fictitious name, of another domestic or foreign limited partnership, limited liability company, or corporation that is used in this state if the other limited partnership, limited liability company, or corporation is organized, incorporated, or authorized to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other limited partnership, limited liability company, or corporation; or

(b) Results from reorganization with the other limited partnership, limited liability company, or corporation.

(4) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(5) This title does not control the use of assumed business names or "trade names."

Sec. 1310. RCW 43.07.120 and 1993 c 269 s 15 are each amended to read as follows:

(1) The secretary of state shall establish by rule and collect the fees in this subsection:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office;

(b) For any certificate under seal;

(c) For filing and recording trademark;

(d) For each deed or patent of land issued by the governor;

(e) For recording miscellaneous records, papers, or other documents.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title 23B RCW, chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.— (sections 101 through 1303 and 1312 through 1314 of this act), or 25.10 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic or facsimile transmittal of information from corporation records or copies of documents;

(d) The providing of information by micrographic or other reduced-format compilation;

(e) The handling of checks, drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and

(f) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

Sec. 1311. RCW 43.07.130 and 1991 c 72 s 54 are each amended to read as follows:

There is created within the state treasury a revolving fund, to be known as the "secretary of state's revolving fund," which shall be used by the office of the secretary of state to defray the costs of printing, reprinting, or distributing printed matter authorized by law to be issued by the office of the secretary of state, and any other cost of carrying out the functions of the secretary of state under Title 23B RCW, or chapters 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.— (sections 101 through 1303 and 1312 through 1314 of this act), or 25.10 RCW.

The secretary of state is hereby authorized to charge a fee for such publications in an amount which will compensate for the costs of printing, reprinting, and distributing such printed matter. Fees recovered by the secretary of state under RCW 43.07.120(2), 23B.01.220(1)(e), ~~((3), and (4))~~ (6) and (7), 23B.18.050, 24.03.410, 24.06.455, or 46.64.040, and such other moneys as are expressly designated for deposit in the secretary of state's revolving fund shall be placed in the secretary of state's revolving fund.

NEW SECTION. Sec. 1312. EFFECTIVE DATE. This act shall take effect October 1, 1994.

NEW SECTION. Sec. 1313. SHORT TITLE. This chapter may be cited as the "Washington Limited Liability Company Act."

NEW SECTION. Sec. 1314. 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. 1315. LEGISLATIVE DIRECTIVE. Sections 101 through 1303 and 1312 through 1314 of this act shall constitute a new chapter in Title 25 RCW.

ACCOUNTANCY STATUTES

Sec. 1401. RCW 18.04.025 and 1992 c 103 s 2 are each amended to read as follows:

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

(1) "Board" means the board of accountancy created by RCW 18.04.035.

(2) "Certified public accountant" or "CPA" means a person holding a certified public accountant certificate.

(3) "State" includes the states of the United States, the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands.

(4) "Reports on financial statements" means any reports or opinions prepared by certified public accountants, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial

enterprises, whether public, private, or governmental, conforms with generally accepted accounting principles or other comprehensive bases of accounting.

(5) The "practice of public accounting" means performing or offering to perform by a person or firm holding itself out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(6) by persons or firms not required to be licensed under this chapter.

(6) "Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company formed under chapter 25.— RCW (sections 101 through 1303 and 1312 through 1314 of this act).

(7) "CPE" means continuing professional education.

(8) "Certificate" means a certificate as a certified public accountant issued under this chapter, or a corresponding certificate issued by another state or foreign jurisdiction that is recognized in accordance with the reciprocity provisions of RCW 18.04.180 and 18.04.183.

(9) "Licensee" means the holder of a valid license issued under this chapter.

(10) "License" means a biennial license to practice public accountancy issued to an individual or firm under this chapter.

(11) "Quality assurance review" means a process established by and conducted at the direction of the board of study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

(12) "Quality review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under subsection (11) of this section.

(13) "Review committee" means any person carrying out, administering or overseeing a quality review authorized by the reviewee.

(14) "Rule" means any rule adopted by the board under authority of this chapter.

(15) "Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person or firm that the person or firm is a certified public accountant and that the person or firm offers to perform any professional services to the public as a certified public accountant. "Holding out" shall not affect or limit a person not required to hold a

certificate under this chapter or a person or firm not required to hold a license under this chapter from engaging in practices identified in RCW 18.04.350(6).

Sec. 1402. RCW 18.04.195 and 1986 c 295 s 8 are each amended to read as follows:

(1) A sole proprietorship engaged in this state in the practice of public accounting shall license biennially with the board as a firm.

(a) The principal purpose and business of the firm shall be to furnish services to the public which are consistent with this chapter and the rules of the board.

(b) The person shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(c) Each resident licensee in charge of an office of the sole proprietorship engaged in this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(2) A partnership engaged in this state in the practice of public accounting shall license biennially with the board as a partnership of certified public accountants, and shall meet the following requirements:

(a) The principal purpose and business of the partnership shall be to furnish services to the public which are consistent with this chapter and the rules of the board;

(b) At least one general partner of the partnership shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(c) Each resident licensee in charge of an office of the partnership in this state and each resident partner personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(3) A corporation organized for the practice of public accounting and engaged in this state in the practice of public accounting shall license biennially with the board as a corporation of certified public accountants and shall meet the following requirements:

(a) The principal purpose and business of the corporation shall be to furnish services to the public which are consistent with this chapter and the rules of the board; and

(b) Each shareholder of the corporation shall be a certified public accountant of some state holding a license to practice and shall be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation shall be a certified public accountant of some state holding a license to practice;

(c) At least one shareholder of the corporation shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(d) Each resident licensee in charge of an office of the corporation in this state and each shareholder or director personally engaged within this state in the

practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(e) A written agreement shall bind the corporation or its shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder, and bind any holder not a qualified shareholder to sell the shares to the corporation or its qualified shareholders. The agreement shall be noted on each certificate of corporate stock. The corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, as long as one share remains outstanding; and

(f) The corporation shall comply with any other rules pertaining to corporations practicing public accounting in this state as the board may prescribe.

(4) A limited liability company engaged in this state in the practice of public accounting shall license biennially with the board as a limited liability company of certified public accountants, and shall meet the following requirements:

(a) The principal purpose and business of the limited liability company shall be to furnish services to the public which are consistent with this chapter and the rules of the board;

(b) At least one manager of the limited liability company shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(c) Each resident manager or member in charge of an office of the limited liability company in this state and each resident manager or member personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(5) Application for a license as a firm shall be made upon the affidavit of the proprietor or person designated as managing partner or shareholder for Washington. This person shall be a certified public accountant holding a license to practice under RCW 18.04.215. The board shall determine in each case whether the applicant is eligible for a license. A partnership or corporation which is licensed to practice under RCW 18.04.215 may use the designation "certified public accountants" or "CPAs" in connection with its partnership or corporate name. The board shall be given notification within ninety days after the admission or withdrawal of a partner or shareholder engaged in this state in the practice of public accounting from any partnership or corporation so licensed.

~~((5))~~ (6) Fees for the license as a firm and for notification of the board of the admission or withdrawal of a partner or shareholder shall be determined by the board. Fees shall be paid by the firm at the time the license application form or notice of admission or withdrawal of a partner or shareholder is filed with the board.

NEW SECTION. Sec. 1403. Any business or profession licensed under this title may operate as a limited liability company formed under chapter 25.—RCW (sections 101 through 1303 and 1312 through 1314 of this act). Any such limited liability company must be licensed as a limited liability company in accordance with the otherwise applicable licensing provisions of this title. Any such limited liability company shall meet the following requirements:

(1) The principal purpose and business of the limited liability company shall be to furnish services to the public which are consistent with the applicable chapter under this title;

(2) At least one manager of the limited liability company shall be a person licensed under the applicable chapter under this title; and

(3) Each resident manager or member in charge of an office of the limited liability company in this state and each resident manager or member personally engaged within this state in the business or profession of the company shall be licensed under the applicable chapter under this title.

NEW SECTION. Sec. 1404. Section 1403 of this act constitutes a new chapter in Title 18 RCW.

Passed the House March 6, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 212

[Second Substitute House Bill 1457]

SCHOOL DISTRICT COMPETITIVE BIDDING THRESHOLD REVISED

AN ACT Relating to school district competitive bidding; and amending RCW 28A.335.190. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.335.190 and 1990 c 33 s 362 are each amended to read as follows:

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the sum of ~~((twenty))~~ fifty thousand dollars, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids therefor and that specifications and other information may be examined at the office of the board or any other officially designated location: PROVIDED, That the board without giving such notice may make improvements or repairs to the property of the district through the shop and repair department of such district when the total of such improvements or repair does not exceed the sum of ~~((seventy-five hundred dollars))~~ (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair. The cost of any public work, improvement or repair for the purposes of this section shall be the aggregate of all amounts to be paid for

labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment or supplies, except books, the cost of which is estimated to be in excess of ~~((seventy-five-hundred))~~ fifteen thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from ~~((seventy-five-hundred))~~ fifteen thousand dollars up to ~~((twenty))~~ fifty thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of ~~((twenty))~~ fifty thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Every building, improvement, repair or other public works project, the cost of which is estimated to be in excess of ~~((seventy-five-hundred-dollars))~~ (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair, shall be on a competitive bid process. All such projects estimated to be less than ~~((twenty))~~ 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 directors shall establish 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 who have indicated the capability of performing the kind of public works being contracted. 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 at least once each year by publishing notice of such opportunity in at least one newspaper of general circulation in the district. Responsible contractors shall be added to the list at any time they submit a written request. Whenever the estimated cost of a public works project is ~~((twenty))~~ fifty thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed.

(4) The contract for the work or purchase shall be awarded to the lowest responsible bidder as defined in RCW 43.19.1911 but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide

bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(5) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency", for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

Passed the House March 6, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 213

[Substitute House Bill 2153]

SCHOOL DISTRICT SEXUAL HARASSMENT POLICY CRITERIA

AN ACT Relating to school district sexual harassment policy criteria; and amending RCW 28A.640.020.

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

Sec. 1. RCW 28A.640.020 and 1975 1st ex.s. c 226 s 2 are each amended to read as follows:

(1) The superintendent of public instruction shall develop regulations and guidelines to eliminate sex discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students.

((+)) (a) Specifically with respect to public school employment, all schools shall be required to:

((a)) (i) Maintain credential requirements for all personnel without regard to sex;

((b)) (ii) Make no differentiation in pay scale on the basis of sex;

((e)) (iii) Assign school duties without regard to sex except where such assignment would involve duty in areas or situations, such as but not limited to a shower room, where persons might be disrobed(-);

((d)) (iv) Provide the same opportunities for advancement to males and females; and

((e)) (v) Make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of, or pay for, instructional and noninstructional duties, on the basis of sex.

~~((2))~~ (b) Specifically with respect to counseling and guidance services for students, they shall be made available to all students equally. All certificated personnel shall be required to stress access to all career and vocational opportunities to students without regard to sex.

~~((3))~~ (c) Specifically with respect to recreational and athletic activities, they shall be offered to all students without regard to sex. Schools may provide separate teams for each sex. Schools which provide the following shall do so with no disparities based on sex: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity and awards; scheduling of games and practice times including use of courts, gyms, and pools: PROVIDED, That such scheduling of games and practice times shall be determined by local administrative authorities after consideration of the public and student interest in attending and participating in various recreational and athletic activities. Each school which provides showers, toilets, or training room facilities for athletic purposes shall provide comparable facilities for both sexes. Such facilities may be provided either as separate facilities or shall be scheduled and used separately by each sex.

The superintendent of public instruction shall also be required to develop a student survey to distribute every three years to each local school district in the state to determine student interest for male/female participation in specific sports.

~~((4))~~ (d) Specifically with respect to course offerings, all classes shall be required to be available to all students without regard to sex: PROVIDED, That separation is permitted within any class during sessions on sex education or gym classes.

~~((5))~~ (e) Specifically with respect to textbooks and instructional materials, which shall also include, but not be limited to, reference books and audio-visual materials, they shall be required to adhere to the guidelines developed by the superintendent of public instruction to implement the intent of this chapter: PROVIDED, That this subsection shall not be construed to prohibit the introduction of material deemed appropriate by the instructor for educational purposes.

(2)(a) By December 31, 1994, the superintendent of public instruction shall develop criteria for use by school districts in developing sexual harassment policies as required under (b) of this subsection. The criteria shall address the subjects of grievance procedures, remedies to victims of sexual harassment, disciplinary actions against violators of the policy, and other subjects at the discretion of the superintendent of public instruction. Disciplinary actions must conform with collective bargaining agreements and state and federal laws. The superintendent of public instruction also shall supply sample policies to school districts upon request.

(b) By June 30, 1995, every school district shall adopt and implement a written policy concerning sexual harassment. The policy shall apply to all school

district employees, volunteers, parents, and students, including, but not limited to, conduct between students.

(c) School district policies on sexual harassment shall be reviewed by the superintendent of public instruction considering the criteria established under (a) of this subsection as part of the monitoring process established in RCW 28A.640.030.

(d) The school district's sexual harassment policy shall be conspicuously posted throughout each school building, and provided to each employee. A copy of the policy shall appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(e) Each school shall develop a process for discussing the district's sexual harassment policy. The process shall ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

(f) "Sexual harassment" as used in this section means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

(i) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(ii) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(iii) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

Passed the House March 6, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 214

[Engrossed Second Substitute House Bill 2154]

LONG-TERM CARE FACILITIES—RESIDENTS' RIGHTS

AN ACT Relating to residents of long-term care facilities; amending RCW 18.20.120; adding a new section to chapter 18.20 RCW; adding a new section to chapter 18.51 RCW; adding a new section to chapter 72.36 RCW; adding a new section to chapter 70.128 RCW; adding a new chapter to Title 70 RCW; and creating new sections.

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

NEW SECTION. **Sec. 1. INTENT.** The legislature recognizes that long-term care facilities are a critical part of the state's long-term care services system. It is the intent of the legislature that individuals who reside in long-term

care facilities receive appropriate services, be treated with courtesy, and continue to enjoy their basic civil and legal rights.

It is also the intent of the legislature that long-term care facility residents have the opportunity to exercise reasonable control over life decisions. The legislature finds that choice, participation, privacy, and the opportunity to engage in religious, political, civic, recreational, and other social activities foster a sense of self-worth and enhance the quality of life for long-term care residents.

The legislature finds that the public interest would be best served by providing the same basic resident rights in all long-term care settings. Residents in nursing facilities are guaranteed certain rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R. part 483. It is the intent of the legislature to extend those basic rights to residents in veterans' homes, boarding homes, and adult family homes.

The legislature intends that a facility should care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. A resident should have a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.

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

(1) "Department" means the department of state government responsible for licensing the provider in question.

(2) "Facility" means a long-term care facility.

(3) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

(4) "Resident" means the individual receiving services in a long-term care facility, that resident's attorney in fact, guardian, or other legal representative acting within the scope of their authority.

(5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body is used for discipline or convenience and not required to treat the resident's medical symptoms.

(6) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(7) "Representative" means a person appointed under RCW 7.70.065.

NEW SECTION. Sec. 3. EXERCISE OF RIGHTS. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a representative may exercise the resident's rights to the extent provided by law.

NEW SECTION. Sec. 4. NOTICE OF RIGHTS AND SERVICES. (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility must inform each resident in writing before, or at the time of admission, and at least once every twenty-four months thereafter of: (a) Services available in the facility; (b) charges for those services including charges for services not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of operations required under section 15(2) of this act.

(4) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under section 5 of this act;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(5) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them.

NEW SECTION. Sec. 5. PROTECTION OF RESIDENT'S FUNDS. (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

(3)(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(4) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(5) Upon the death of a resident with a personal fund deposited with the facility the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

NEW SECTION. Sec. 6. PRIVACY AND CONFIDENTIALITY. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private room for each resident however, a resident cannot be prohibited by the facility from meeting with guests in his or her bedroom if no roommates object.

(2) The resident may approve or refuse the release of personal and clinical records to an individual outside the facility unless otherwise provided by law.

NEW SECTION. Sec. 7. GRIEVANCES. A resident has the right to:

(1) Voice grievances. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

NEW SECTION. Sec. 8. EXAMINATION OF SURVEY OR INSPECTION RESULTS. A resident has the right to:

(1) Examine the results of the most recent survey or inspection of the facility conducted by federal or state surveyors or inspectors and plans of correction in effect with respect to the facility. A notice that the results are available must be publicly posted with the facility's state license, and the results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

NEW SECTION. Sec. 9. MAIL AND TELEPHONE. The resident has the right to privacy in communications, including the right to:

(1) Send and promptly receive mail that is unopened;

(2) Have access to stationery, postage, and writing implements at the resident's own expense; and

(3) Have reasonable access to the use of a telephone where calls can be made without being overheard.

NEW SECTION. Sec. 10. ACCESS AND VISITATION RIGHTS. (1) The resident has the right and the facility must not interfere with access to any resident by the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The state long-term care ombudsman as established under chapter 43.190 RCW;

(d) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by his or her representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state and federal law.

NEW SECTION. **Sec. 11. PERSONAL PROPERTY.** (1) The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(2) The facility shall, upon request, provide the resident with a lockable container or other lockable storage space for small items of personal property, unless the resident's individual room is lockable with a key issued to the resident.

NEW SECTION. **Sec. 12. TRANSFER AND DISCHARGE REQUIREMENTS.** (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay;

or

(e) The facility ceases to operate.

(2) Before a facility transfers or discharges a resident, the facility must:

(a) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(b) Record the reasons in the resident's record; and

(c) Include in the notice the items described in subsection (4) of this section.

(3)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (2) of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

- (i) The safety of individuals in the facility would be endangered;
- (ii) The health of individuals in the facility would be endangered;
- (iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(4) The written notice specified in subsection (2) of this section must include the following:

- (a) The reason for transfer or discharge;
- (b) The effective date of transfer or discharge;
- (c) The location to which the resident is transferred or discharged;
- (d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the protection and advocacy for mentally ill individuals act.

(5) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(6) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility.

NEW SECTION. Sec. 13. RESTRAINTS. The resident has the right to be free from physical restraint or chemical restraint. This section does not require or prohibit facility staff from reviewing the judgment of the resident's physician in prescribing psychopharmacologic medications.

NEW SECTION. Sec. 14. ABUSE. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(1) The facility must not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion.

(2) Subject to available resources, the department of social and health services shall provide background checks required by RCW 43.43.842 for employees of facilities licensed under chapter 18.20 RCW without charge to the facility.

NEW SECTION. Sec. 15. QUALITY OF LIFE. (1) The facility must promote care for residents in a manner and in an environment that maintains or

enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable facility rules designed to protect the rights and quality of life of residents, the resident has the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(b) Interact with members of the community both inside and outside the facility;

(c) Make choices about aspects of his or her life in the facility that are significant to the resident;

(d) Wear his or her own clothing and determine his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(f) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct his or her own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the resident.

(3)(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility must provide a resident or family group, if one exists, with meeting space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(f) The resident has the right to refuse to perform services for the facility except as voluntarily agreed by the resident and the facility in the resident's service plan.

(4) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) A resident has the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(6) A resident has the right to share a double room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

NEW SECTION. Sec. 16. FEE DISCLOSURE—DEPOSITS. (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admissions to the long-term care facility or nursing facility, shall provide the resident, or his or her representative, full disclosure in writing of the long-term care facility or nursing facility's schedule of charges for items and services provided by the facility and the amount of any admissions fees, deposits, or minimum stay fees. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, or minimum stay fees will be refunded to the resident or his or her representative if the resident leaves the long-term care facility or nursing facility. If a resident, during the first thirty days of residence, dies or is hospitalized and does not return to the facility, the facility shall refund any deposit already paid less the facility's per diem rate for the days the resident actually resided or reserved a bed in the facility notwithstanding any minimum stay policy. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or their representative within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section.

NEW SECTION. Sec. 17. LIABILITY MAY NOT BE WAIVED. No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require residents to sign waivers of potential liability for losses of personal property.

NEW SECTION. Sec. 18. OMBUDSMAN IMPLEMENTATION DUTIES. The long-term care ombudsman shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and boarding homes ensure that residents are able to exercise their rights. The long-term care ombudsman shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, and senior and disable citizen organizations and report to the house of representatives committee on health care and the senate committee on health and human services concerning the implementation of this chapter with any applicable recommendations by July 1, 1995.

NEW SECTION. Sec. 19. NONJUDICIAL REMEDIES THROUGH REGULATORY AUTHORITIES ENCOURAGED—REMEDIES CUMULATIVE. The legislature intends that long-term care facility or nursing home

residents, their family members or guardians, the long-term care ombudsman, protection and advocacy personnel identified in section 12(4) (e) and (f), and others who may seek to assist long-term care facility or nursing home residents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of sections 1 through 24 of this act. Wherever feasible, direct discussion with facility personnel or administrators should be employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. This act is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. This act is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on the effective date of this act.

NEW SECTION. Sec. 20. RIGHTS ARE MINIMAL. The rights set forth in this chapter are the minimal rights guaranteed to all residents of long-term care facilities, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

NEW SECTION. Sec. 21. A new section is added to chapter 18.20 RCW to read as follows:

BOARDING HOMES. Sections 1 through 4, 5(1), and 6 through 20 of this act apply to this chapter and persons regulated under this chapter.

NEW SECTION. Sec. 22. A new section is added to chapter 18.51 RCW to read as follows:

NURSING HOMES. Sections 16 through 20 of this act apply to this chapter and persons regulated under this chapter.

NEW SECTION. Sec. 23. A new section is added to chapter 72.36 RCW to read as follows:

VETERAN HOME. Chapter 70.— RCW (sections 1 through 20 of this act) applies to this chapter and persons regulated under this chapter.

NEW SECTION. Sec. 24. A new section is added to chapter 70.128 RCW to read as follows:

ADULT HOMES. Sections 1 through 4, 5(1), and 6 through 20 of this act apply to this chapter and persons regulated under this chapter.

Sec. 25. RCW 18.20.120 and 1957 c 253 s 12 are each amended to read as follows:

All information received by the department or authorized health department through filed reports, inspections, or as otherwise authorized under this chapter, shall not be disclosed publicly in any manner as to identify individuals or

boarding homes, except ~~((in a proceeding involving the question of licensure))~~ at the specific request of a member of the public and disclosure is consistent with RCW 42.17.260(1).

NEW SECTION. **Sec. 26. 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. 27. FEDERAL SEVERABILITY.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec. 28. CAPTIONS.** Captions as used in this act constitute no part of the law.

NEW SECTION. **Sec. 29. CODIFICATION.** Sections 1 through 20 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec. 30.** Nothing in this act shall affect the classifying of an adult family home for the purposes of zoning.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 215

[Substitute House Bill 2164]

INTERLAKE SCHOOL

AN ACT Relating to residential habilitation centers; amending RCW 71A.20.020; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 71A.20.020 and 1988 c 176 s 702 are each amended to read as follows:

The following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: ~~((Interlake School, located at Medical Lake, Spokane county;))~~ Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; Fircrest School, located at Seattle, King county; and Frances Haddon Morgan Children's Center, located at Bremerton, Kitsap county.

***NEW SECTION. Sec. 2.** *The legislature shall consider the amendment or repeal of RCW 71A.20.020 following the submission of the report by the secretary of the department of social and health services required by chapter (House Bill No. 2163), Laws of 1994.*

*Sec. 2 was vetoed, see message at end of chapter.

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

Passed the House February 11, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor April 1, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

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

"I am returning herewith, without my approval as to section 2, Substitute House Bill No. 2164 entitled:

"AN ACT Relating to residential habilitation centers;"

Substitute House Bill No. 2164 removes Interlake School from the list of permanently established Residential Habilitation Centers in RCW 71A.20.020. Section 2 of the bill states that the legislature will consider further amendment or the repeal of RCW 71A.20.020 contingent on a Department of Social and Health Services study directed in proposed House Bill No. 2163. The department intends to complete such a study. However, as House Bill No. 2163 was not enacted, I am vetoing section 2 of the bill.

With the exception of section 2, Substitute House Bill No. 2164 is approved."

CHAPTER 216

[Substitute House Bill 2176]

CITIES AND TOWNS—INCORPORATIONS AND ANNEXATIONS

AN ACT Relating to city and town incorporations and annexations; amending RCW 35.02.030, 35.02.020, 35.02.001, 35.02.010, 36.93.100, 35.02.039, 36.93.150, 36.93.160, 35.02.070, and 35.02.078; adding new sections to chapter 35.02 RCW; adding a new section to chapter 35.13 RCW; adding a new section to chapter 35A.14 RCW; adding new sections to chapter 36.93 RCW; adding a new section to chapter 43.21C RCW; creating a new section; repealing RCW 35.13.175, 35A.14.230, 36.93.115, and 36.93.152; 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 35.02 RCW to read as follows:

Any person proposing the incorporation of a city or town shall file a notice of the proposed incorporation with the county legislative authority of the county in which all or the major portion of the proposed city or town is located. The notice shall include the matters required to be included in the incorporation petition under RCW 35.02.030 and be accompanied by both a one hundred dollar filing fee and an affidavit from the person stating that he or she is a registered voter residing in the proposed city or town.

The county legislative authority shall promptly notify the boundary review board of the proposed incorporation, which shall hold a public meeting on the proposed incorporation within thirty days of the notice being filed where persons favoring and opposing the proposed incorporation may state their views. If a boundary review board does not exist in the county, the county legislative authority shall provide the public meeting. The public meeting shall be held at a location in or near the proposed city or town. Notice of the public meeting shall be published in a newspaper of general circulation in the area proposed to be incorporated at least once ten days prior to the public meeting.

NEW SECTION. Sec. 2. A new section is added to chapter 35.02 RCW to read as follows:

Within one working day after the public meeting under section 1 of this act, the county auditor shall provide an identification number for the incorporation effort to the person who made the notice of proposing the incorporation. The identification number shall be included on the petition proposing the incorporation.

The petition proposing the incorporation may retain the proposed boundaries and other matters as described in the notice, or may alter the proposed boundaries and other matters.

Sec. 3. RCW 35.02.030 and 1986 c 234 s 4 are each amended to read as follows:

The petition for incorporation shall: (1) Indicate whether the proposed city or town shall be a noncharter code city operating under Title 35A RCW, or a city or town operating under Title 35 RCW; (2) indicate the form or plan of government the city or town is to have; (3) set forth and particularly describe the proposed boundaries of the proposed city or town; (4) state the name of the proposed city or town; (5) state the number of inhabitants therein, as nearly as may be; and (6) pray that ~~((it may))~~ the city or town be incorporated. The petition shall conform to the requirements for form prescribed in RCW 35A.01.040. The petition shall include the identification number provided under section 2 of this act and state the last date by which the petition may be filed, as determined under RCW 35.02.020.

If the proposed city or town is located in more than one county, the petition shall be prepared in such a manner as to indicate the different counties within which the signators reside.

A city or town operating under Title 35 RCW may have a mayor/council, council/manager, or commission form of government. A city operating under Title 35A RCW may have a mayor/council or council/manager plan of government.

If the petition fails to specify the matters described in subsection (1) of this section, the proposal shall be to incorporate as a noncharter code city. If the petition fails to specify the matter described in subsection (2) of this section, the

proposal shall be to incorporate with a mayor/council form or plan of government.

Sec. 4. RCW 35.02.020 and 1986 c 234 s 3 are each amended to read as follows:

A petition for incorporation must be signed by ~~((qualified))~~ registered voters resident within the limits of the proposed city or town equal in number to at least ten percent of the ~~((votes cast at the last state general election and presented to))~~ number of voters residing within the proposed city or town and filed with the auditor of the county in which all, or the largest portion of, the proposed city or town is located. The petition must be filed with the auditor by no later than one hundred eighty days after the date the public meeting on the proposed incorporation was held under section 1 of this act, or the next regular business day following the one hundred eightieth day if the one hundred eightieth day is not a regular business day.

NEW SECTION. **Sec. 5.** A new section is added to chapter 35.02 RCW to read as follows:

For a period of ninety days after a petition proposing the incorporation of a city or town is filed with the county auditor, a petition or resolution proposing the annexation of any portion of the territory included in the incorporation proposal may be filed or adopted and the proposed annexation may continue following the applicable statutory procedures. Territory that ultimately is annexed, as a result of the filing of such an annexation petition or adoption of such an annexation resolution during this ninety-day period, shall be withdrawn from the incorporation proposal.

A proposed annexation of a portion of the territory included within the proposed incorporation, that is initiated by the filing of an annexation petition or adoption of an annexation resolution after this ninety-day period, shall be held in abeyance and may not occur unless: (1) The boundary review board modifies the boundaries of the proposed incorporation to remove the territory from the proposed incorporation; (2) the boundary review board rejects the proposed incorporation and the proposed city or town has a population of less than seven thousand five hundred; or (3) voters defeat the ballot proposition authorizing the proposed incorporation.

NEW SECTION. **Sec. 6.** Where a petition proposing the incorporation of a city or town has been filed with a county auditor prior to the effective date of this act, the time limitations on competing annexation proposals that are provided under section 5 of this act are modified as follows:

(1) A petition or resolution proposing the annexation of any portion of the territory included in the incorporation proposal, that was filed or adopted within the later of ninety days after the date the incorporation petition was filed or the effective date of this act, may continue following the applicable statutory procedures. A boundary review board may simultaneously consider the proposed incorporation and such an annexation.

(2) A petition or resolution proposing the annexation of any portion of the territory included in the incorporation proposal, that is filed or adopted within the later of ninety days after the date the incorporation petition was filed or the effective date of this act, shall be held in abeyance and may not occur unless: (a) The boundary review board modifies the boundaries of the proposed incorporation to remove the territory from the proposed incorporation; (b) the boundary review board rejects the proposed incorporation and the proposed city or town has a population of less than seven thousand five hundred; or (c) voters defeat the ballot proposition authorizing the proposed incorporation.

NEW SECTION. Sec. 7. A new section is added to chapter 35.13 RCW to read as follows:

After a petition proposing an annexation by a city or town is filed with the city or town or the governing body of the city or town, or after a resolution proposing an annexation by a city or town has been adopted by the city or town governing body, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or review board created under RCW 35.13.171 rejects the proposed annexation; or (3) the city or town governing body rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation.

NEW SECTION. Sec. 8. A new section is added to chapter 35A.14 RCW to read as follows:

After a petition proposing an annexation by a code city has been filed with the city or the city legislative authority, or after a resolution proposing the annexation by a code city has been adopted by the city legislative authority, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board or county annexation review board created under RCW 35A.14.160 modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or county annexation review board created under RCW 35A.14.160 rejects the proposed annexation; or (3) the city legislative authority rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation.

NEW SECTION. Sec. 9. A new section is added to chapter 36.93 RCW to read as follows:

A boundary review board may simultaneously consider the proposed incorporation of a city or town, and the proposed annexation of a portion of the territory included in the proposed incorporation, if the resolution or petition initiating the annexation is adopted or filed ninety or fewer days after the petition proposing the incorporation was filed.

NEW SECTION. Sec. 10. A new section is added to chapter 36.93 RCW to read as follows:

The proposed incorporation of any city or town that includes territory located in a county in which a boundary review board exists shall be reviewed by the boundary review board and action taken as described under RCW 36.93.150.

Sec. 11. RCW 35.02.001 and 1989 c 84 s 25 are each amended to read as follows:

~~((Actions taken under chapter 35.02 RCW may be))~~ The incorporation of a city or town is subject to ((potential)) review by a boundary review board under chapter 36.93 RCW if a boundary review board exists in the county in which all or any portion of the territory proposed to be incorporated is located.

Sec. 12. RCW 35.02.010 and 1986 c 234 s 2 are each amended to read as follows:

Any contiguous area containing not less than ~~((three))~~ one thousand five hundred inhabitants lying outside the limits of an incorporated city or town may become incorporated as a city or town operating under Title 35 or 35A RCW as provided in this chapter: **PROVIDED**, That no area which lies within five air miles of the boundary of any city having a population of fifteen thousand or more shall be incorporated which contains less than three thousand inhabitants.

Sec. 13. RCW 36.93.100 and 1992 c 162 s 1 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 county with a population of one million or more 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 of any special district 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 if (i) the extension is through the installation of water mains of six inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions; or

(c) The extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of sewer mains of eight inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW

36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions;

(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. 14. RCW 35.02.039 and 1986 c 234 s 7 are each amended to read as follows:

(1) The county legislative authority of the county in which the proposed city or town is located shall hold a public hearing on the proposed incorporation if no boundary review board exists in the county (~~or if the boundary review board does not take jurisdiction over the proposal~~). The public hearing shall be held within sixty days of when the county auditor notifies the legislative authority of the sufficiency of the petition if no boundary review board exists in the county, or within ninety days of when notice of the proposal is filed with the boundary review board if the boundary review board fails to take jurisdiction over the proposal. The public hearing may be continued to other days, not extending more than sixty days beyond the initial hearing date. If the boundary review board takes jurisdiction, the county legislative authority shall not hold a public hearing on the proposal.

(2) If the proposed city or town 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.

Sec. 15. RCW 36.93.150 and 1990 c 273 s 1 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))~~ Approve the proposal as submitted~~((+))~~.
- (2) Subject to RCW 35.02.170, ~~((modification of))~~ modify the proposal by adjusting boundaries to add or delete territory~~((: PROVIDED, That))~~. However, any proposal for annexation ((by the board)) of territory to a town shall be subject to RCW 35.21.010 and the board shall not add additional territory, the amount of which is greater than that included in the original proposal((: PROVIDED FURTHER, That such)). Any 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 the proposed incorporation of a city with an estimated population of seven thousand five hundred or more 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((, but)). However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such a manner as to reduce the population below seven thousand five hundred((+)).
- (3) ~~((Determination of))~~ Determine a division of assets and liabilities between two or more governmental units where relevant~~((+))~~.
- (4) ~~((Determination))~~ Determine 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))~~ Disapprove 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; (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) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but

the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board (~~shall disapprove~~) disapproves 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, 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.

Sec. 16. RCW 36.93.160 and 1988 c 202 s 40 are each amended to read as follows:

(1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days' advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of (~~such~~) the area and to the proponent of (~~such~~) the change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing. Notice shall also be posted in ten public places in the area affected for five days when the area is ten acres or more. When the

area affected is less than ten acres, five notices shall be posted in five public places for five days. Notice as provided in this subsection shall include any territory which the board has determined to consider adding in accordance with RCW 36.93.150(2).

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of ~~((such))~~ the testimony shall be provided to any person or governmental unit.

(3) The chairman upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the production by him of any records, books, documents, public records or public papers.

(4) Within forty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of ~~((such))~~ the modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within ~~((ten))~~ thirty days from the date of ~~((said))~~ the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal.

The filing of ~~((such))~~ the notice of appeal within ~~((such))~~ the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or

(e) Unsupported by material and substantial evidence in view of the entire record as submitted, or

(f) ~~((Arbitrary or capricious))~~ Clearly erroneous.

An aggrieved party may seek appellate review of any final judgment of the superior court in the manner provided by law as in other civil cases.

Sec. 17. RCW 35.02.070 and 1986 c 234 s 9 are each amended to read as follows:

(1) If a county legislative authority holds a public hearing on a proposed incorporation, it shall establish and define the boundaries of the proposed city or town, being authorized to decrease ~~((but not))~~ or increase the area proposed in the petition ~~((, except for adjusting the boundaries out to the right of way line of any portion of a public highway, street, or road pursuant to RCW 35.02.170. Any decrease shall not exceed twenty percent of the area proposed or that portion of the area located within the county: PROVIDED, That the area shall not be so decreased that the number of inhabitants therein shall be less than required by RCW 35.02.010 as now or hereafter amended))~~ under the same restrictions that a boundary review board may modify the proposed boundaries. The county legislative authority, or the boundary review board if it takes jurisdiction, shall determine the number of inhabitants within the boundaries it has established.

(2) A county legislative authority shall disapprove the proposed incorporation if, without decreasing the area proposed in the petition, it does not conform with RCW 35.02.010. A county legislative authority may not otherwise disapprove a proposed incorporation.

(3) A county legislative authority or boundary review board has jurisdiction only over that portion of a proposed city or town located within the boundaries of the county.

Sec. 18. RCW 35.02.078 and 1986 c 234 s 10 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 ~~((f))~~ when the boundary review board ~~((approves or modifies and approves))~~ takes action on the proposal other than disapproving 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))~~ action 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.

NEW SECTION. Sec. 19. A new section is added to chapter 43.21C RCW to read as follows:

Annexation of territory by a city or town is exempted from compliance with this chapter.

NEW SECTION. Sec. 20. The following acts or parts of acts are each repealed:

- (1) RCW 35.13.175 and 1973 1st ex.s. c 164 s 18 & 1965 c 7 s 35.13.175;
- (2) RCW 35A.14.230 and 1967 ex.s. c 119 s 35A.14.230;
- (3) RCW 36.93.115 and 1982 c 220 s 5; and
- (4) RCW 36.93.152 and 1990 c 273 s 2.

NEW SECTION. Sec. 21. 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, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 217

[Second Substitute House Bill 2210]

CASCADIA COMMUNITY COLLEGE DISTRICT CREATED

AN ACT Relating to higher education; amending RCW 28B.50.040 and 28B.45.020; adding new sections to chapter 28B.50 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.50 RCW to read as follows:

The legislature finds that population growth in north King and south Snohomish counties has created a need to expand higher education and work force training programs for the people living and working in those areas. In keeping with the recommendations of the higher education coordinating board,

the legislature intends to help address those education and training needs through the creation of Cascadia Community College, expansion of educational opportunities at Lake Washington Technical College, and support of the University of Washington's branch campus at Bothell-Woodinville. It is further the intention of the legislature, in keeping with the higher education coordinating board recommendations, that the Cascadia Community College and the University of Washington branch campus be collocated, and that the new community college and the University of Washington's branch campus work in partnership to ensure that properly prepared students from community colleges and other institutions are able to transfer smoothly to the branch campus.

The legislature further finds that a governing board for Cascadia Community College needs to be appointed and confirmed as expeditiously as possible. The legislature intends to work cooperatively with the governor to facilitate the appointment and confirmation of trustees for the college.

Sec. 2. RCW 28B.50.040 and 1991 c 238 s 23 are each amended to read as follows:

The state of Washington is hereby divided into ~~((twenty-nine))~~ thirty college districts as follows:

- (1) The first district shall encompass the counties of Clallam and Jefferson;
- (2) The second district shall encompass the counties of Grays Harbor and Pacific;
- (3) The third district shall encompass the counties of Kitsap and Mason;
- (4) The fourth district shall encompass the counties of San Juan, Skagit and Island;
- (5) The fifth district shall encompass Snohomish county except for the Northshore common school district and that portion encompassed by the twenty-third district created in subsection (23) of this section: PROVIDED, That the fifth district shall encompass the Everett Community College;
- (6) The sixth district shall encompass the present boundaries of the common school districts of Seattle and Vashon Island, King county;
- (7) The seventh district shall encompass the present ~~((boundaries))~~ boundary of the common school district~~((s))~~ of Shoreline in King county ~~((and Northshore in King and Snohomish counties))~~;
- (8) The eighth district shall encompass the present boundaries of the common school districts of ~~((Lake Washington,))~~ Bellevue, Issaquah, ~~((Lower Snoqualmie,))~~ Mercer Island, Skykomish and Snoqualmie, King county;
- (9) The ninth district shall encompass the present boundaries of the common school districts of Federal Way, Highline and South Central, King county;
- (10) The tenth district shall encompass the present boundaries of the common school districts of Auburn, Black Diamond, Renton, Enumclaw, Kent, Lester and Tahoma, King county, and the King county portion of Puyallup common school district No. 3;
- (11) The eleventh district shall encompass all of Pierce county, except for the present boundaries of the common school districts of Tacoma and Peninsula;

(12) The twelfth district shall encompass Lewis county, the Rochester common school district No. 401, the Tenino common school district No. 402 of Thurston county, and the Thurston county portion of the Centralia common school district No. 401;

(13) The thirteenth district shall encompass the counties of Cowlitz, and Wahkiakum;

(14) The fourteenth district shall encompass the counties of Clark, Skamania and that portion of Klickitat county not included in the sixteenth district;

(15) The fifteenth district shall encompass the counties of Chelan, Douglas and Okanogan;

(16) The sixteenth district shall encompass the counties of Kittitas, Yakima, and that portion of Klickitat county included in United States census divisions 1 through 4;

(17) The seventeenth district shall encompass the counties of Ferry, Lincoln (except consolidated school district 105-157-166J and the Lincoln county portion of common school district 167-202), Pend Oreille, Spokane, Stevens and Whitman;

(18) The eighteenth district shall encompass the counties of Adams and Grant, and that portion of Lincoln county comprising consolidated school district 105-157-166J and common school district 167-202;

(19) The nineteenth district shall encompass the counties of Benton and Franklin;

(20) The twentieth district shall encompass the counties of Asotin, Columbia, Garfield and Walla Walla;

(21) The twenty-first district shall encompass Whatcom county;

(22) The twenty-second district shall encompass the present boundaries of the common school districts of Tacoma and Peninsula, Pierce county;

(23) The twenty-third district shall encompass that portion of Snohomish county within such boundaries as the state board for community and technical colleges shall determine: PROVIDED, That the twenty-third district shall encompass the Edmonds Community College;

(24) The twenty-fourth district shall encompass all of Thurston county except the Rochester common school district No. 401, the Tenino common school district No. 402, and the Thurston county portion of the Centralia common school district No. 401;

(25) The twenty-fifth district shall encompass all of Whatcom county;

(26) The twenty-sixth district shall encompass the Northshore, Lake Washington, Bellevue, Mercer Island, Issaquah, Riverview, Snoqualmie Valley and Skykomish school districts;

(27) The twenty-seventh district shall encompass the Renton, Kent, Auburn, Tahoma, and Enumclaw school districts and a portion of the Seattle school district described as follows: Commencing at a point established by the intersection of the Duwamish river and the south boundary of the Seattle Community College District (number six) and thence north along the centerline

of the Duwanish river to the west waterway; thence north along the centerline of the west waterway to Elliot Bay; thence along Elliot Bay to a line established by the intersection of the extension of Denny Way to Elliot Bay; thence east along the line established by the centerline of Denny Way to Lake Washington; thence south along the shoreline of Lake Washington to the south line of the Seattle Community College District; and thence west along the south line of the Seattle Community College District to the point of beginning;

(28) The twenty-eighth district shall encompass all of Pierce county; ~~((and))~~

(29) The twenty-ninth district shall encompass all of Pierce county; and

(30) The thirtieth district shall encompass the present boundaries of the common school districts of Lake Washington and Riverview in King county and Northshore in King and Snohomish counties.

Sec. 3. RCW 28B.45.020 and 1989 1st ex.s. c 7 s 3 are each amended to read as follows:

The University of Washington is responsible for ensuring the expansion of upper-division and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the higher education coordinating board. The University of Washington shall meet that responsibility through the operation of at least two branch campuses. One branch campus shall be located in the Tacoma area. ~~((Another branch campus shall be located in the Bothell-Woodinville area.))~~ Another branch campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.50 RCW to read as follows:

There is hereby created a board of trustees for district thirty and Cascadia Community College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

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

Passed the House March 7, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 218

[Second Substitute House Bill 2228]

GAMBLING—PUBLIC POLICY CLARIFIED—ON-LINE STATE LOTTERY—COMPULSIVE GAMBLING—GAMBLING DEVICES

AN ACT Relating to clarifying the state's public policy on gambling by restricting the frequency of lottery games, addressing problem and compulsive gambling, and enhancing the enforcement of the state's gambling laws; amending RCW 9.46.010, 67.70.010, 67.70.040, 67.70.190, 9.46.0241, 9.46.220, 9.46.221, 9.46.222, 9.46.080, 9.46.235, 9.46.260, and 10.105.900; reenacting

and amending RCW 9A.82.010; adding new sections to chapter 9.46 RCW; creating new sections; repealing RCW 9.46.230; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature intends with this act to clarify the state's public policy on gambling regarding the frequency of state lottery drawings, the means of addressing problem and compulsive gambling, and the enforcement of the state's gambling laws. This act is intended to clarify the specific types of games prohibited in chapter 9.46 RCW and is not intended to add to existing law regarding prohibited activities. The legislature recognizes that slot machines, video pull-tabs, video poker, and other electronic games of chance have been considered to be gambling devices before the effective date of this act.

Sec. 2. RCW 9.46.010 and 1975 1st ex.s. c 259 s 1 are each amended to read as follows:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punch boards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.

Sec. 3. RCW 67.70.010 and 1987 c 511 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Commission" means the state lottery commission established by this chapter;

~~(2) ("Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;~~

~~(3)) "Director" means the director of the state lottery established by this chapter;~~

(3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;

(4) "On-line game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play, and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations.

Sec. 4. RCW 67.70.040 and 1991 c 359 s 1 are each amended to read as follows:

The commission shall have the power, and it shall be its duty:

(1) To promulgate such rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares(~~, without limitation~~). Approval of the legislature is required before conducting any on-line game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (~~less amounts of unclaimed prizes deposited in the general fund under RCW 67.70.190 during the fiscal year ending June 30, 1989;~~) (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery.

Sec. 5. RCW 67.70.190 and 1988 c 289 s 802 are each amended to read as follows:

~~((1))~~ Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, the prize shall be retained in the state lottery fund for further use as prizes (~~, except as provided in subsection (2) of this section~~), and all rights to the prize shall be extinguished.

~~((2))~~ During the fiscal year ending June 30, 1989, moneys from unclaimed prizes shall be used as follows:

(a) Fifty percent of the moneys, not exceeding one million dollars, shall be deposited quarterly in the general fund;

(b) The remainder of the moneys shall be retained in the state lottery account for further use as prizes;)

NEW SECTION. Sec. 6. The legislature recognizes that some individuals in this state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. Therefore, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop informational signs concerning problem and compulsive gambling which include a toll-free hot line number for problem and compulsive gamblers. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers.

NEW SECTION. Sec. 7. A new section is added to chapter 9.46 RCW to read as follows:

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All gambling devices as defined in this chapter;

(b) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises;

(c) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, in any manner to facilitate the sale, delivery, receipt, or operation of any gambling device, or the promotion or operation of a professional gambling activity, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not 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;

(ii) A conveyance is not 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 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) If the owner of a conveyance has been arrested under this chapter 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;

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and electronic data that are used, or intended for use, in violation of this chapter;

(e) All moneys, negotiable instruments, securities, or other tangible or intangible property of value at stake or displayed in or in connection with professional gambling activity or furnished or intended to be furnished by any

person to facilitate the promotion or operation of a professional gambling activity;

(f) All tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to professional gambling activity and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. 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. Personal property may not be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission that that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements that:

(i) Have been used with the knowledge of the owner for the manufacturing, processing, delivery, importing, or exporting of any illegal gambling equipment, or operation of a professional gambling activity that would constitute a felony violation of this chapter; or

(ii) Have been acquired in whole or in part with proceeds traceable to a professional gambling activity, if the activity is not less than a class C felony.

Real property forfeited under this chapter that is encumbered by a bona fide security interest remains 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. Property may not be forfeited under 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.

(2)(a) A law enforcement officer of this state may seize real or personal property subject to forfeiture under this chapter upon process issued by any superior court having jurisdiction over the property. Seizure of real property includes the filing of a lis pendens by the seizing agency. Real property seized under this section may not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, but 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 bona fide security interest.

(b) Seizure of personal property without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(ii) 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;

(iii) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure under subsection (2) of this section, proceedings for forfeiture are 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 must 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. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. 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 is deemed complete upon mailing within the fifteen-day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) (c), (e), (f), or (g) 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 is 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.

(5) 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 (1) (b), (c), (d), (e), (f), or (g) 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 must be afforded a reasonable opportunity to be heard as to the claim or right. The hearing must be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except if the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing must be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter

to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed must be the district court if the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom must be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence is upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture is upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a final 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 (1) (b), (c), (d), (e), (f), or (g) of this section.

(6) If property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to the agency for training or use in enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; or

(c) Destroy any articles that may not be lawfully possessed within the state of Washington, or that have a fair market value of less than one hundred dollars.

(7)(a) If property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property. The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure, and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer the calendar quarter after the end of the fiscal year.

(d) The annual report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(8) The seizing law enforcement agency shall retain forfeited property and net proceeds exclusively for the expansion and improvement of gambling-related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(9) Gambling devices that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and must be seized and summarily forfeited to the state. Gambling equipment that is seized or comes into the possession of a law enforcement agency, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. The superior court shall enter orders for the forfeiture of real property, subject to court rules. The seizing agency shall file such an order in the county auditor's records in the county in which the real property is located.

(11)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (6)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer before asserting a claim under this section.

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search; and

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency shall notify the landlord of the status of the claim by the end of the thirty-day period. This section does not require the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (6)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (7)(a) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

Sec. 8. RCW 9.46.0241 and 1987 c 4 s 11 are each amended to read as follows:

"Gambling device," as used in this chapter, means: (1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance, including, but not limited to slot machines, video pull-tabs, video poker, and other electronic games of chance; (2) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (3) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (4) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or

dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: PROVIDED, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: PROVIDED FURTHER, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting.

NEW SECTION. Sec. 9. A new section is added to chapter 9.46 RCW to read as follows:

Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a felony and shall be fined not more than one hundred thousand dollars or imprisoned not more than five years or both. However, this section does not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices that are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized if:

(1) The person is acting in conformance with this chapter and the rules adopted under this chapter; and

(2) The devices are a type and kind traditionally and usually employed in connection with the particular activity. This section also does not apply to any act or acts by the persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when the activity is conducted in compliance with this chapter and in accordance with the rules adopted under this chapter. In the enforcement of this section direct possession of any such a gambling device is presumed to be knowing possession thereof.

NEW SECTION. Sec. 10. A new section is added to chapter 9.46 RCW to read as follows:

Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a gross misdemeanor. However, this section does not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. This section

also does not apply to any act or acts in furtherance of the activities when conducted in compliance with this chapter and in accordance with the rules adopted under this chapter. In the enforcement of this section direct possession of any such a gambling record is presumed to be knowing possession thereof.

Sec. 11. RCW 9.46.220 and 1991 c 261 s 10 are each amended to read as follows:

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with five or more people;

(b) Accepts wagers exceeding five thousand dollars during any (~~calendar month~~) thirty-day period on future contingent events; or

(c) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021.

Sec. 12. RCW 9.46.221 and 1991 c 261 s 11 are each amended to read as follows:

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with less than five people;

(b) Accepts wagers exceeding two thousand dollars during any (~~calendar month~~) thirty-day period on future contingent events;

(c) Maintains a "gambling premises" as defined in this chapter; or

(d) Maintains gambling records as defined in RCW (~~9.46.020~~) 9.46.0253.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021.

Sec. 13. RCW 9.46.222 and 1991 c 261 s 12 are each amended to read as follows:

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter~~(+)~~, and:

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) He or she operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) He or she is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021.

Sec. 14. RCW 9.46.080 and 1981 c 139 s 6 are each amended to read as follows:

The commission shall employ a full time director, who shall be the administrator for the commission in carrying out its powers and duties and who shall issue rules and regulations adopted by the commission governing the activities authorized hereunder and shall supervise commission employees in carrying out the purposes and provisions of this chapter. In addition, the director shall employ a deputy director, ~~((two))~~ not more than three assistant directors, together with such investigators and enforcement officers and such staff as the commission determines is necessary to carry out the purposes and provisions of this chapter. The director, the deputy director, ~~((both))~~ the assistant directors, and personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended. Neither the director nor any commission employee working therefor shall be an officer or manager of any bona fide charitable or bona fide nonprofit organization, or of any organization which conducts gambling activity in this state.

The director, subject to the approval of the commission, is authorized to enter into agreements on behalf of the commission for mutual assistance and services, based upon actual costs, with any state or federal agency or with any city, town, or county, and such state or local agency is authorized to enter into such an agreement with the commission. If a needed service is not available from another agency of state government within a reasonable time, the director may obtain that service from private industry.

Sec. 15. RCW 9.46.235 and 1987 c 191 s 1 are each amended to read as follows:

(1) For purposes of a prosecution under ~~((RCW 9.46.230(4)))~~ section 9 of this act or a seizure, confiscation, or destruction order under ~~((RCW~~

~~9.46.230(1))~~ section 7 of this act, it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) (~~RCW 9.46.230(2))~~ Section 7 of this act shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it is at least twenty-five years old.

(4) Sections 7 and 9 of this act do not apply to gambling devices on board a passenger cruise ship which has been registered and bonded with the federal maritime commission, if the gambling devices are not operated for gambling purposes within the state.

Sec. 16. RCW 9.46.260 and 1973 1st ex.s. c 218 s 26 are each amended to read as follows:

Proof of possession of any device used for professional gambling or any record relating to professional gambling specified in (~~RCW 9.46.230~~) section 9 of this act is prima facie evidence of possession thereof with knowledge of its character or contents.

Sec. 17. RCW 9A.82.010 and 1992 c 210 s 6 and 1992 c 145 s 13 are each reenacted and 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~~) sections 9 and 10 of this act;

(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) Money laundering, as defined in RCW 9A.83.020;

(r) 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;

(s) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(t) Promoting pornography, as defined in RCW 9.68.140;

(u) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(v) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(z) A pattern of equity skimming, as defined in RCW 61.34.020; or

(aa) Commercial telephone solicitation in violation of RCW 19.158.040(1).

(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. RCW 10.105.900 and 1993 c 288 s 1 are each amended to read as follows:

This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, (~~9.46.230~~) section 7 of this act, 9A.82.100, 9A.83.030, 7.48.090, or 77.12.101.

NEW SECTION. Sec. 19. RCW 9.46.230 and 1987 c 202 s 139, 1987 c 4 s 43, 1981 c 139 s 12, 1977 ex.s. c 326 s 16, 1974 ex.s. c 155 s 5, 1974 ex.s. c 135 s 5, & 1973 1st ex.s. c 218 s 23 are each repealed.

NEW SECTION. Sec. 20. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 219

[Engrossed Substitute House Bill 2237]

STATE FACILITIES' MASTER PLANNING

AN ACT Relating to planning and management of state facilities; amending RCW 43.88A.020, 43.88.032, 43.82.010, 79.24.580, 43.82.110, and 43.82.120; reenacting and amending RCW 43.88.030, 43.88.110, 43.01.090, and 43.19.500; adding a new section to chapter 43.88 RCW; adding a new section to chapter 28A.525 RCW; adding a new section to chapter 43.19 RCW; creating new sections; repealing RCW 43.82.040, 43.82.050, 43.82.060, 43.82.070, 43.82.080, 43.82.090, 79.24.630, 79.24.632, 79.24.634, 79.24.636, 79.24.638, 79.24.640, 79.24.642, 79.24.6421, 79.24.6422, 79.24.644, 79.24.645, 79.24.646, and 79.24.647; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the acquisition, construction, and management of state-owned and leased facilities has a profound and long-range effect upon the delivery and cost of state programs, and that there is an increasing need for better facility planning and management to improve the effectiveness and efficiency of state facilities.

Sec. 2. RCW 43.88.030 and 1991 c 358 s 1 and 1991 c 284 s 1 are each reenacted and 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 director shall provide agencies that are required under RCW 44.40.070 to develop comprehensive six-year program and financial plans with a complete set of instructions for submitting these program and financial plans at the same time that instructions for submitting other budget

requests are provided. 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, as well as an outline of the proposed six-year financial policies where applicable, 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, or six-year period where applicable, based upon the estimated revenues as approved by the economic and revenue forecast council or upon the estimated revenues of the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast, including those revenues anticipated to support the six-year programs and financial plans under RCW 44.40.070. In estimating revenues to support financial plans under RCW 44.40.070, the office of financial management shall rely on information and advice from the interagency revenue task force. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. 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 supplemental, biennial, or six-year 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.

Supplemental and biennial documents shall reflect a six-year expenditure plan consistent with estimated revenues from existing sources and at existing rates for those agencies required to submit six-year program and financial plans under RCW 44.40.070. Any additional revenue resulting from proposed changes to existing statutes shall be separately identified within the document as well as related expenditures for the six-year period.

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, those anticipated for the ensuing biennium, and those anticipated for the ensuing six-year period to support the six-year programs and financial plans required under RCW 44.40.070;

- (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;
- (f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury; and
- (g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.70 RCW, shown by agency and in total.

(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, as well as those required to support the six-year programs and financial plans required under RCW 44.40.070;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any transfers of moneys that otherwise would have been available for appropriation;

- (h) Common school expenditures on a fiscal-year basis;
- (i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods.

(3) A separate capital budget document or schedule shall be submitted that will contain the following:

- (a) ~~A ((capital plan consisting of proposed capital spending for at least four fiscal periods succeeding the next fiscal period))~~ statement setting forth a long-range facilities plan for the state that identifies and includes the highest priority needs within affordable spending levels;

(b) A capital program consisting of proposed capital projects for ~~((at least))~~ the next biennium and the two ~~((fiscal periods))~~ biennia succeeding the next ~~((fiscal period))~~ biennium consistent with the long-range facilities plan. Insomuch as is practical, and recognizing emergent needs, the capital program shall reflect the priorities, projects, and spending levels proposed in previously submitted capital budget documents in order to provide a reliable long-range planning tool for the legislature and state agencies;

(c) A capital plan consisting of proposed capital spending for at least four ~~((fiscal periods))~~ biennia succeeding the next ~~((fiscal period))~~ biennium;

(d) A statement of the reason or purpose for a project;

(e) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(f) A statement about the proposed site, size, and estimated life of the project, if applicable;

(g) Estimated total project cost;

(h) For major projects valued over five million dollars, estimated costs for the following project components: Acquisition, consultant services, construction, equipment, project management, and other costs included as part of the project. Project component costs shall be displayed in a standard format defined by the office of financial management to allow comparisons between projects;

(i) Estimated total project cost for each phase of the project as defined by the office of financial management;

~~((j))~~ (j) Estimated ensuing biennium costs;

~~((k))~~ (k) Estimated costs beyond the ensuing biennium;

~~((l))~~ (l) Estimated construction start and completion dates;

~~((m))~~ (m) Source and type of funds proposed;

~~((n))~~ (n) Estimated ongoing operating budget costs or savings resulting from the project, including staffing and maintenance costs;

(o) For any capital appropriation requested for a state agency for the acquisition of land or the capital improvement of land in which the primary purpose of the acquisition or improvement is recreation or wildlife habitat conservation, the capital budget document, or an omnibus list of recreation and habitat acquisitions provided with the governor's budget document, shall identify the projected costs of operation and maintenance for at least the two biennia succeeding the next biennium. Omnibus lists of habitat and recreation land acquisitions shall include individual project cost estimates for operation and maintenance as well as a total for all state projects included in the list. The document shall identify the source of funds from which the operation and maintenance costs are proposed to be funded;

(p) Such other information bearing upon capital projects as the governor deems to be useful;

~~((r))~~ (q) Standard terms, including a standard and uniform definition of maintenance for all capital projects;

~~((e))~~ (r) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (3), the term "capital project" shall be defined subsequent to the analysis, findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative transportation committee, legislative evaluation and accountability program committee, and office of financial management.

(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. 3. RCW 43.88A.020 and 1979 c 151 s 146 are each amended to read as follows:

The office of financial management shall, in cooperation with appropriate legislative committees and legislative staff, establish a procedure for the provision of fiscal notes on the expected impact of bills and resolutions which increase or decrease or tend to increase or decrease state government revenues or expenditures. Such fiscal notes shall indicate by fiscal year the impact for the remainder of the biennium in which the bill or resolution will first take effect as well as a cumulative forecast of the fiscal impact for the succeeding four fiscal years. Fiscal notes shall separately identify the fiscal impacts on the operating and capital budgets. Estimates of fiscal impacts shall be calculated using the procedures contained in the fiscal note instructions issued by the office of financial management.

In establishing the fiscal impact called for pursuant to this chapter, the office of financial management shall coordinate the development of fiscal notes with all state agencies affected.

Sec. 4. RCW 43.88.032 and 1989 c 311 s 1 are each amended to read as follows:

(1) Annual ongoing or routine maintenance costs shall be programmed in the operating budget rather than in the capital budget.

(2) All debt-financed pass-through money to local governments shall be programmed and separately identified in the ~~((capital))~~ budget document.

Sec. 5. RCW 43.88.110 and 1991 sp.s. c 32 s 27 and 1991 c 358 s 2 are each reenacted and amended to read as follows:

This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

(a) Appropriations made for capital projects including transportation projects;

(b) Estimates of total project costs including past, current, ensuing, and future biennial costs;

(c) Comparisons of actual costs to estimated costs;

(d) Comparisons of estimated construction start and completion dates with actual dates;

(e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) The office of financial management, prior to approving allotments for major capital construction projects valued over five million dollars, shall institute procedures for reviewing such projects at the predesign stage that will reduce long-term costs and increase facility efficiency. The procedures shall include, but not be limited to, the following elements:

(a) Evaluation of facility program requirements and consistency with long-range plans;

(b) Utilization of a system of cost, quality, and performance standards to compare major capital construction projects; and

(c) A requirement to incorporate value-engineering analysis and constructability review into the project schedule.

(6) No expenditure may be incurred or obligation entered into for such major capital construction projects including, without exception, land acquisition, site development, predesign, design, construction, and equipment acquisition and installation, until the allotment of the funds to be expended has been approved by the office of financial management. This limitation does not prohibit the continuation of expenditures and obligations into the succeeding biennium for

projects for which allotments have been approved in the immediate prior biennium.

(7) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures for reasonableness and conformance with legislative intent. Once the governor approves the statements of proposed operating expenditures, further revisions shall be made only at the beginning of the second fiscal year and must be initiated by the governor. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. Revisions caused by executive increases to spending authority shall not be made after June 30, 1987. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

~~((6))~~ (8) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.

~~((7))~~ (9) The director of financial management shall monitor agency operating expenditures against the approved statement of proposed expenditures and shall provide the legislature with quarterly explanations of major variances.

~~((8))~~ (10) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not

practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees.

NEW SECTION. Sec. 6. A new section is added to chapter 43.88 RCW to read as follows:

(1) The capital appropriations act may authorize the governor, through the director of financial management, to transfer the appropriation authority for a capital project that is in excess of the amount required for the completion of the project to another capital project for which the appropriation is insufficient.

(a) No such transfer may be used to expand the capacity or change the intended use of the project beyond that intended by the legislature in making the appropriation.

(b) The transfer may be effected only between capital projects within a specific department, commission, agency, or institution of higher education.

(c) The transfer may be effected only if the project from which the transfer of funds is made is substantially complete and there are funds remaining, or bids have been let on the project from which the transfer of funds is made and it appears to a substantial certainty that the project can be completed within the biennium for less than the amount appropriated.

(2) For the purposes of this section, the legislature intends that each project be defined as proposed to the legislature in the governor's budget document, unless the legislative history demonstrates that the legislature intended to define the scope of a project in a different way.

(3) The office of financial management shall notify the legislative fiscal committees of the senate and the house of representatives at least thirty days before any transfer is effected under this section except emergency projects or any transfer under two hundred fifty thousand dollars, and shall prepare a report to such committees listing all completed transfers at the close of each fiscal year.

Sec. 7. RCW 43.82.010 and 1990 c 47 s 1 are each amended to read as follows:

(1) The director of (~~the department of~~) general administration, on behalf of the agency involved, shall purchase, lease, lease purchase, rent, or otherwise acquire all real estate, improved or unimproved, as may be required by elected state officials, institutions, departments, commissions, boards, and other state agencies, or federal agencies where joint state and federal activities are undertaken and may grant easements and transfer, exchange, sell, lease, or sublease all or part of any surplus real estate for those state agencies which do not otherwise have the specific authority to dispose of real estate. This section does not transfer financial liability for the acquired property to the department of general administration.

(2) Except for real estate occupied by federal agencies, the director shall determine the location, size, and design of any real estate or improvements

thereon acquired or held pursuant to subsection (1) of this section. Facilities acquired or held pursuant to this chapter, and any improvements thereon, shall conform to standards adopted by the director and approved by the office of financial management governing facility efficiency unless a specific exemption from such standards is provided by the director of general administration. The director of general administration shall report to the office of financial management annually on any exemptions granted pursuant to this subsection.

(3) The director of general administration may fix the terms and conditions of each lease entered into under this chapter, except that no lease shall extend greater than twenty years in duration. The director of general administration may enter into a long-term lease greater than five years in duration upon a determination by the director of the office of financial management that the long-term lease provides a more favorable rate than would otherwise be available, it appears to a substantial certainty that the facility is necessary for use by the state for the full length of the lease term, and the facility meets the standards adopted pursuant to subsection (2) of this section. The director of general administration may enter into a long-term lease greater than ten years in duration if an analysis shows that the life-cycle cost of leasing the facility is less than the life-cycle cost of purchasing or constructing a facility in lieu of leasing the facility.

(4) It is the policy of the state to encourage the collocation and consolidation of state services into single or adjacent facilities, whenever appropriate, to improve public service delivery, minimize duplication of facilities, increase efficiency of operations, and promote sound growth management planning.

(5) The director of general administration shall provide coordinated long-range planning services to identify and evaluate opportunities for collocating and consolidating state facilities. Upon the renewal of any lease, the inception of a new lease, or the purchase of a facility, the director of general administration shall determine whether an opportunity exists for collocating the agency or agencies in a single facility with other agencies located in the same geographic area. If a collocation opportunity exists, the director of general administration shall consult with the affected state agencies and the office of financial management to evaluate the impact collocation would have on the cost and delivery of agency programs, including whether program delivery would be enhanced due to the centralization of services. The director of general administration, in consultation with the office of financial management, shall develop procedures for implementing collocation and consolidation of state facilities.

(6) The director of general administration is authorized to purchase, lease, rent, or otherwise acquire improved or unimproved real estate as owner or lessee and to lease or sublet all or a part of such real estate to state or federal agencies. The director of general administration shall charge each using agency its proportionate rental which shall include an amount sufficient to pay all costs, including, but not limited to, those for utilities, janitorial and accounting services, and sufficient to provide for contingencies; which shall not exceed five percent

of the average annual rental, to meet unforeseen expenses incident to management of the real estate.

~~((4))~~ (7) If the director of general administration determines that it is necessary or advisable to undertake any work, construction, alteration, repair, or improvement on any real estate acquired pursuant to subsection~~((s))~~ (1) or ~~((3))~~ (6) of this section, the director shall cause plans and specifications thereof and an estimate of the cost of such work to be made and filed in his or her office and the state agency benefiting thereby is hereby authorized to pay for such work out of any available funds: PROVIDED, That the cost of executing such work shall not exceed the sum of twenty-five thousand dollars. Work, construction, alteration, repair, or improvement in excess of twenty-five thousand dollars, other than that done by the owner of the property if other than the state, shall be performed in accordance with the public works law of this state.

~~((5))~~ (8) In order to obtain maximum utilization of space, the director of general administration shall make space utilization studies, and shall establish standards for use of space by state agencies. Such studies shall include the identification of opportunities for collocation and consolidation of state agency office and support facilities.

~~((6))~~ (9) The director of general administration may construct new buildings on, or improve existing facilities, and furnish and equip, all real estate under his or her management. Prior to the construction of new buildings or major improvements to existing facilities or acquisition of facilities using a lease purchase contract, the director of general administration shall conduct an evaluation of the facility design and budget using life-cycle cost analysis, value-engineering, and other techniques to maximize the long-term effectiveness and efficiency of the facility or improvement.

~~((7))~~ (10) All conveyances and contracts to purchase, lease, rent, transfer, exchange, or sell real estate and to grant and accept easements shall be approved as to form by the attorney general, signed by the director of general administration or the director's designee, and recorded with the county auditor of the county in which the property is located.

~~((8))~~ (11) The director of general administration may delegate any or all of the functions specified in this section to any agency upon such terms and conditions as the director deems advisable.

~~((9))~~ (12) This section does not apply to the acquisition of real estate by:

- (a) The state college and universities for research or experimental purposes;
- (b) The state liquor control board for liquor stores and warehouses; and
- (c) The department of natural resources, the department of ~~((fisheries, the department of))~~ fish and wildlife, the department of transportation, and the state parks and recreation commission for purposes other than the leasing of offices, warehouses, and real estate for similar purposes.

~~((10))~~ (13) Notwithstanding any provision in this chapter to the contrary, the department of general administration may negotiate ground leases for public

lands on which property is to be acquired under a financing contract pursuant to chapter 39.94 RCW under terms approved by the state finance committee.

NEW SECTION. Sec. 8. (1) The legislature finds that current facility planning, budgeting, and management responsibilities are spread among a number of state agencies, and that there may be a need to consolidate these functions within a single entity with independent powers and fiduciary responsibility for state facilities as a whole to increase the consistency and quality of facility decisions.

(2) The office of financial management shall evaluate the need for and potential responsibilities of a central state facilities authority to coordinate and manage the design, acquisition, construction, and utilization of state facilities, including leased facilities. The evaluation shall include an examination of the current roles and responsibilities of state agencies including the department of general administration, the higher education coordinating board, the state board for community and technical colleges, and the office of financial management to identify critical areas for improvement and any overlapping areas of responsibility.

(3) The office of financial management shall consider the following potential responsibilities of a central facilities authority in its evaluation:

(a) Involvement in agency master planning and facility predesign activities to assist agencies in developing creative alternatives for meeting program needs;

(b) Development of facility performance and cost standards to assist in facility planning and budget evaluation;

(c) Critical evaluation of facility designs and budget requests through life-cycle cost analysis, value-engineering, and other tools to maximize the long-term effectiveness and efficiency of state facilities;

(d) Central management of and planning for the state's facility inventory, including both leased and state-owned facilities, to maximize agency collocation and consolidation opportunities and create identifiable state government and education centers;

(e) Administration and management of agency capital construction projects;

(f) Development of leasing standards and procedures, including a methodology for analyzing the costs and benefits of leasing versus owning facilities, and appropriate procurement of leased, lease-developed, or lease-purchased facilities;

(g) Development of facility operation and maintenance standards or guidelines;

(h) Administration and allocation of centrally pooled appropriations for projects affecting more than one agency or for which efficiency can be enhanced by central administration; and

(i) Other responsibilities as determined by the office of financial management.

(3) The evaluation shall consider increasing the responsibilities and powers of an existing agency or agencies, or establishing a new agency or agencies to

accomplish the objectives of this section. The evaluation shall also estimate the costs and benefits of operating a central facility authority or authorities.

(4) The office of financial management shall convene a steering committee composed of representatives of affected state agencies and the private real estate industry to assist in collecting needed information and conducting the evaluation.

(5) The office of financial management shall report on the results of its evaluation to the appropriate standing committees of the legislature by January 10, 1995.

This section shall expire June 30, 1995.

NEW SECTION. **Sec. 9.** The office of financial management shall conduct a review of the state's bonding requirements under chapter 39.08 RCW, shall analyze alternative forms of security, and shall report its findings and analysis to the appropriate committees of the senate and the house of representatives no later than January 10, 1995. The alternative forms of security shall include, but not be limited to, a bond in an amount less than the full contract price, letter of credit, certified check, cash escrow, and assets of the contractor. The purpose of the review is to determine if alternative forms of security will provide essentially the same level of protection to the state at a lower cost to the contractor and the state.

This section shall expire June 30, 1995.

NEW SECTION. **Sec. 10.** (1) The state board of education shall study the potential for savings by constructing common schools from prototypical school construction designs. The findings and recommendations of the board shall be submitted to the senate committee on ways and means and the house of representatives capital budget committee by December 15, 1994.

(2) This section expires June 30, 1995.

NEW SECTION. **Sec. 11.** A new section is added to chapter 28A.525 RCW to read as follows:

The state board of education, for purposes of determining eligibility for state assistance for new construction, shall adopt rules excluding from the inventory of available educational space those spaces that have been constructed for educational and community activities from grants received from other public or private entities.

Sec. 12. RCW 79.24.580 and 1993 sp.s. c 24 s 927 are each amended to read as follows:

After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be ~~((distributed as follows: (1) To the state building bond redemption fund such amounts necessary to retire bonds issued pursuant to RCW 79.24.630 through 79.24.647 prior to January 1, 1987, and for which tide and harbor area revenues have been pledged, and (2) all moneys not deposited for the purposes of subsection (1) of this section shall be))~~

deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects. During the fiscal biennium ending June 30, 1995, the funds may be appropriated for shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock.

Sec. 13. RCW 43.82.110 and 1969 c 121 s 2 are each amended to read as follows:

All office or other space made available through the provisions of this chapter shall be leased by the director to such state or federal agencies, for such rental, and on such terms and conditions as he or she deems advisable. PROVIDED, HOWEVER, If space becomes surplus, the director is authorized to lease office or other space in any project to any person, corporation or body politic, for such period as the director shall determine said space is surplus, and upon such other terms and conditions as he or she may prescribe.

~~((There is hereby created within the treasury a special fund to be known as the "general administration bond redemption fund" in which all pledged rentals shall be deposited. In the event bonds are issued for more than one project, the rentals from each project will be maintained as separate accounts. The funds in this account or accounts shall be used to meet principal and interest payments when due on the bonds issued to finance the specific project for which each such account was created until all of such bonds and interest thereon have been paid.~~

~~The bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on the rentals deposited in the general administration bond redemption fund, as aforesaid, and received from the project for which the bonds were issued. Such rentals shall be pledged by the state for such purpose.))~~

Sec. 14. RCW 43.82.120 and 1965 c 8 s 43.82.120 are each amended to read as follows:

~~((There is hereby established within the state treasury a reserve fund to be known as the "general administration bond redemption guarantee fund.")) All ((unpledged)) rental income collected by the department of general administration from rental of state buildings shall be deposited in the ((general administration bond redemption guarantee fund until a total of two hundred thousand dollars is on deposit in said fund after which all unpledged rental income shall be deposited in the)) general administration management fund, the creation of which is hereby authorized. ((In the event the general administration bond redemption guarantee fund is diminished, it shall be replenished in the same manner.~~

~~If at any time there is insufficient money in the general administration bond redemption fund to make any payments of interest or principal due on any bonds payable from such fund, the state treasurer shall transfer from such general~~

~~administration bond redemption guarantee fund to the general administration bond redemption fund an amount sufficient to meet such payments.))~~

NEW SECTION. Sec. 15. The legislature finds that there is inequitable distribution among state programs of capital costs associated with maintaining and rehabilitating state facilities. The legislature finds that there are insufficient available resources to support even minor capital improvements other than debt financing. The legislature further finds that little attention is focused on efficient facility management because in many cases capital costs are not factored into the ongoing process of allocating state resources. The purpose of sections 16 through 18 of this act is to create a mechanism to distribute capital costs among the agencies and programs occupying facilities owned and managed by the department of general administration in Thurston county that will foster increased accountability for facility decisions and more efficient use of the facilities.

Sec. 16. RCW 43.01.090 and 1991 sp.s. c 31 s 10 are each amended to read as follows:

The director of general administration may assess a charge or rent against each state board, commission, agency, office, department, activity, or other occupant or user for payment of a proportionate share of costs for occupancy of buildings, structures, or facilities including but not limited to all costs of acquiring, constructing, operating, and maintaining such buildings, structures, or facilities and the repair, remodeling, or furnishing thereof and for the rendering of any service or the furnishing or providing of any supplies, equipment, or materials.

The director of general administration may recover the full costs including appropriate overhead charges of the foregoing by periodic billings as determined by the director including but not limited to transfers upon accounts and advancements into the general administration facilities and services revolving fund. Charges related to the rendering of real estate services under RCW 43.82.010 and to the operation of nonassigned public spaces in Thurston county shall be allocated separately from other charges assessed under this section. Rates shall be established by the director of general administration after consultation with the director of financial management. The director of general administration may allot, provide, or furnish any of such facilities, structures, services, equipment, supplies, or materials to any other public service type occupant or user at such rates or charges as are equitable and reasonably reflect the actual costs of the services provided: **PROVIDED, HOWEVER,** That the legislature, its duly constituted committees, interim committees and other committees shall be exempted from the provisions of this section.

Upon receipt of such bill, each entity, occupant, or user shall cause a warrant or check in the amount thereof to be drawn in favor of the department of general administration which shall be deposited in the state treasury to the credit of the general administration facilities and services revolving fund

established in RCW 43.19.500 unless the director of financial management has authorized another method for payment of costs.

Beginning July 1, 1995, the director of general administration shall assess a capital projects surcharge upon each agency or other user occupying a facility owned and managed by the department of general administration in Thurston county. The capital projects surcharge does not apply to agencies or users that agree to pay all future repairs, improvements, and renovations to the buildings they occupy and a proportional share, as determined by the office of financial management, of all other campus repairs, installations, improvements, and renovations that provide a benefit to the buildings they occupy or that have an agreement with the department of general administration that contains a charge for a similar purpose, including but not limited to section 19 of this act, in an amount greater than the capital projects surcharge. The director, after consultation with the director of financial management, shall adopt differential capital project surcharge rates to reflect the differences in facility type and quality. The initial payment structure for this surcharge shall be one dollar per square foot per year. The surcharge shall increase over time to an amount that when combined with the facilities and service charge equals the market rate for similar types of lease space in the area or equals five dollars per square foot per year, whichever is less. The capital projects surcharge shall be in addition to other charges assessed under this section. Proceeds from the capital projects surcharge shall be deposited into the Thurston county capital facilities account created in section 18 of this act.

Sec. 17. RCW 43.19.500 and 1982 c 41 s 2 are each amended to read as follows:

There is hereby created a fund within the state treasury designated as the "department of general administration facilities and services revolving fund". Such revolving fund shall be used by the department of general administration for the payment of certain costs, expenses, and charges, as ~~((hereinafter))~~ specified in this section, incurred by it in the operation and administration of the department in the rendering of services, the furnishing or supplying of equipment, supplies and materials, and for providing or allocating facilities, including the operation, maintenance, rehabilitation, or furnishings thereof to other agencies, offices, departments, activities, and other entities enumerated in RCW 43.01.090 and including the rendering of services in acquiring real estate under RCW 43.82.010 and the operation and maintenance of nonassigned public spaces in Thurston county. The department shall treat the rendering of services in acquiring real estate and the operation and maintenance of nonassigned public spaces as ~~((a))~~ separate operating ~~((entity))~~ entities within the fund for financial accounting and control.

The schedule of services, facilities, equipment, supplies, materials, maintenance, rehabilitation, furnishings, operations, and administration to be so financed and recovered shall be determined jointly by the director of general administration and the director of financial management, in equitable amounts

which, together with any other income or appropriation, will provide the department of general administration with funds to meet its anticipated expenditures during any allotment period.

The director of general administration may (~~promulgate~~) adopt rules (~~and regulations~~) governing the provisions of RCW 43.01.090 and this section and the relationships and procedures between the department of general administration and such other entities.

NEW SECTION. Sec. 18. A new section is added to chapter 43.19 RCW to read as follows:

The Thurston county capital facilities account is created in the state treasury. The account is subject to the appropriation and allotment procedures under chapter 43.88 RCW. Moneys in the account may be expended for capital projects in facilities owned and managed by the department of general administration in Thurston county.

NEW SECTION. Sec. 19. It is hereby declared to be the policy of the state of Washington that each agency or other occupant of newly constructed or substantially renovated facilities owned and operated by the department of general administration in Thurston county shall proportionally share the debt service costs associated with the original construction or substantial renovation of the facility. Beginning July 1, 1995, each state agency or other occupant of a facility constructed or substantially renovated after July 1, 1992, and owned and operated by the department of general administration in Thurston county, shall be assessed a charge to pay the principal and interest payments on any bonds or other financial contract issued to finance the construction or renovation or an equivalent charge for similar projects financed by cash sources. In recognition that full payment of debt service costs may be higher than market rates for similar types of facilities or higher than existing agreements for similar charges entered into prior to the effective date of this section, the initial charge may be less than the full cost of principal and interest payments. The charge shall be assessed to all occupants of the facility on a proportional basis based on the amount of occupied space or any unique construction requirements. The office of financial management, in consultation with the department of general administration, shall develop procedures to implement this section and report to the legislative fiscal committees, by October 1994, their recommendations for implementing this section. The office of financial management shall separately identify in the budget document all payments and the documentation for determining the payments required by this section for each agency and fund source during the current and the two past and future fiscal biennia. The charge authorized in this section is subject to annual audit by the state auditor.

NEW SECTION. Sec. 20. The following acts or parts of acts are each repealed:

- (1) RCW 43.82.040 and 1965 c 8 s 43.82.040;
- (2) RCW 43.82.050 and 1965 c 8 s 43.82.050;

- (3) RCW 43.82.060 and 1965 c 8 s 43.82.060;
- (4) RCW 43.82.070 and 1965 c 8 s 43.82.070;
- (5) RCW 43.82.080 and 1965 c 8 s 43.82.080; and
- (6) RCW 43.82.090 and 1979 ex.s. c 67 s 4 & 1965 c 8 s 43.82.090.

NEW SECTION. Sec. 21. The following acts or parts of acts are each repealed:

- (1) RCW 79.24.630 and 1970 ex.s. c 14 s 1;
- (2) RCW 79.24.632 and 1969 ex.s. c 273 s 4 & 1967 ex.s. c 105 s 5;
- (3) RCW 79.24.634 and 1969 ex.s. c 273 s 5 & 1967 ex.s. c 105 s 6;
- (4) RCW 79.24.636 and 1969 ex.s. c 273 s 6 & 1967 ex.s. c 105 s 7;
- (5) RCW 79.24.638 and 1982 2nd ex.s. c 8 s 5, 1969 ex.s. c 273 s 7, & 1967 ex.s. c 105 s 8;
- (6) RCW 79.24.640 and 1969 ex.s. c 273 s 8 & 1967 ex.s. c 105 s 9;
- (7) RCW 79.24.642 and 1969 ex.s. c 273 s 9 & 1967 ex.s. c 105 s 10;
- (8) RCW 79.24.6421 and 1969 ex.s. c 273 s 1;
- (9) RCW 79.24.6422 and 1969 ex.s. c 273 s 2;
- (10) RCW 79.24.644 and 1967 ex.s. c 105 s 11;
- (11) RCW 79.24.645 and 1969 ex.s. c 273 s 10;
- (12) RCW 79.24.646 and 1967 ex.s. c 105 s 12; and
- (13) RCW 79.24.647 and 1969 ex.s. c 273 s 13.

NEW SECTION. Sec. 22. (1) For the purposes of RCW 43.82.010, "the department of fish and wildlife" means "the department of fisheries and the department of wildlife" until July 1, 1994.

(2) This section expires July 1, 1994.

NEW SECTION. Sec. 23. Sections 8 and 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 220

[House Bill 2242]

YOUTHFUL OFFENDERS—CORRECTIONAL FACILITY PLACEMENT

AN ACT Relating to youthful offender placement; and amending RCW 72.01.410.

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

Sec. 1. RCW 72.01.410 and 1981 c 136 s 74 are each amended to read as follows:

Whenever any child under the age of (~~sixteen~~) eighteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of (~~eighteen~~) twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best prepare the individual for a successful return to the community. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known.

Passed the House February 12, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 221

[Substitute House Bill 2270]

PROBATE AND TRUST—REVISED PROVISIONS

AN ACT Relating to probate and trust matters; amending RCW 11.02.005, 11.07.010, 11.08.170, 11.12.040, 11.12.080, 11.12.110, 11.12.120, 11.12.160, 11.12.180, 11.20.070, 11.24.010, 11.24.040, 11.28.120, 11.28.237, 11.40.010, 11.40.013, 11.40.015, 11.40.040, 11.40.080, 11.48.010, 11.56.050, 11.68.010, 11.96.009, 11.96.020, 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100, 11.96.110, 11.96.130, 11.96.140, 11.96.160, 11.96.170, 11.96.180, 11.98.200, 11.98.240, 11.100.035, 82.32.240, 83.100.020, and 83.110.010; adding new sections to chapter 11.12 RCW; adding a new section to chapter 11.94 RCW; adding new chapters to Title 11 RCW; creating a new section; repealing RCW 11.12.050, 11.12.090, 11.12.130, 11.12.140, 11.12.150, 11.12.200, 11.12.210, 11.56.015, 11.56.140, 11.56.150, 11.56.160, and 11.56.170; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 11.02.005 and 1993 c 73 s 1 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the ~~((intestate's))~~ deceased person's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020 ~~((and includes all codicils))~~.

(9) "Codicil" means ~~((an instrument that is validly executed in the manner provided by this title for a will and that refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto))~~ a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account or security, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity.

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on ~~((July 25, 1993))~~ the effective date of this section.

~~((16))~~ Words that import the singular number may also be applied to the plural of persons and things.

~~((17))~~ Words importing the masculine gender only may be extended to females also.

Sec. 2. RCW 11.07.010 and 1993 c 236 s 1 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must

be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the

payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of the effective date of this act to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Sec. 3. RCW 11.08.170 and 1990 c 225 s 1 are each amended to read as follows:

Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any

claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void. The department of revenue may waive the provisions of this section in its discretion. The department shall be deemed to have waived its right to administer in such probate proceedings under RCW 11.28.120(~~(3)~~) (5) unless application for appointment of the director or the director's designee is made within forty days immediately following receipt of notice of institution of proceedings.

NEW SECTION. Sec. 4. This chapter applies in all instances in which no other abatement scheme is expressly provided.

NEW SECTION. Sec. 5. (1) Except as provided in subsection (2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (a) Intestate property;
- (b) Residuary gifts;
- (c) General gifts;
- (d) Specific gifts.

For purposes of abatement a demonstrative gift, defined as a general gift charged on any specific property or fund, is deemed a specific gift to the extent of the value of the property or fund on which it is charged, and a general gift to the extent of a failure or insufficiency of that property or fund. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred gift is sold, diminished, or exhausted incident to administration, not including satisfaction of debts or liabilities according to their community or separate status under section 7 of this act, abatement must be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(4) To the extent that the whole of the community property is subject to abatement, the shares of the decedent and of the surviving spouse in the community property abate equally.

(5) If required under section 8 of this act, nonprobate assets must abate with those disposed of under the will and passing by intestacy.

NEW SECTION. Sec. 6. To the extent that a gift is to be satisfied out of a source that consists of both separate and community property, unless otherwise indicated in the will it is presumed to be a gift from separate and community

property in proportion to their relative value in the property or fund from which the gift is to be satisfied.

NEW SECTION. Sec. 7. (1) A community debt or liability is charged against the entire community property, with the surviving spouse's half and the decedent spouse's half charged equally.

(2) A separate debt or liability is charged first against separate property, and if that is insufficient against the balance of decedent's half of community property remaining after community debts and liabilities are satisfied.

(3) A community debt or liability that is also the separate debt or liability of the decedent is charged first against the whole of the community property and then against the decedent's separate property.

(4) An expense of administration is charged against the separate property and the decedent's half of the community property in proportion to the relative value of the property, unless a different charging of expenses is shown to be appropriate under the circumstances including against the surviving spouse's share of the community property.

(5) Property of a similar type, community or separate, is appropriated in accordance with the abatement priorities of section 5 of this act.

(6) Property that is primarily chargeable for a debt or liability is exhausted, in accordance with the abatement priorities of section 5 of this act, before resort is had, also in accordance with section 5 of this act, to property that is secondarily chargeable.

NEW SECTION. Sec. 8. (1) If abatement is necessary among takers of a nonprobate asset, the court shall adopt the abatement order and limitations set out in sections 5, 6, and 7 of this act, assigning categories in accordance with subsection (2) of this section.

(2) A nonprobate transfer must be categorized for purposes of abatement, within the list of priorities set out in section 5(1) of this act, as follows:

(a) All nonprobate forms of transfer under which an identifiable nonprobate asset passes to a beneficiary or beneficiaries on the event of the decedent's death, such as, but not limited to, joint tenancies and payable-on-death accounts, are categorized as specific bequests.

(b) With respect to all other interests passing under nonprobate forms of transfer, each must be categorized in the manner that is most closely comparable to the nature of the transfer of that interest.

(3) If and to the extent that a nonprobate asset is subject to the same obligations as are assets disposed of under the decedent's will, the nonprobate assets abate ratably with the probate assets, within the categories set out in subsection (2) of this section.

(4) If the nonprobate instrument of transfer or the decedent's will expresses a different order of abatement, or if the decedent's overall dispositive plan or the express or implied purpose of the transfer would be defeated by the order of abatement stated in subsections (1) through (3) of this section, the nonprobate

assets abate as may be found necessary to give effect to the intention of the decedent.

NEW SECTION. **Sec. 9.** A new section is added to chapter 11.12 RCW to read as follows:

(1) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child", the child must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted child has been named or provided for, the following rules apply:

(a) A child identified in a will by name is considered named whether identified as a child or in any other manner.

(b) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(c) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(3) The omitted child must receive an amount equal in value to that which the child would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.— RCW (sections 4 through 8 of this act).

NEW SECTION. **Sec. 10.** A new section is added to chapter 11.12 RCW to read as follows:

(1) If a will fails to name or provide for a spouse of the decedent whom the decedent marries after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse", the spouse must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted spouse has been named or provided for, the following rules apply:

(a) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.

(b) A reference in a will to the decedent's future spouse or spouses, or words of similar import, constitutes a naming of a spouse whom the decedent later marries. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(3) The omitted spouse must receive an amount equal in value to that which the spouse would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or other provision and provisions for the omitted spouse outside the decedent's will.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.— RCW (sections 4 through 8 of this act).

NEW SECTION. Sec. 11. A new section is added to chapter 11.12 RCW to read as follows:

(1) If, after making a will, the testator's marriage is dissolved or invalidated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property affected passes, as if the former spouse failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remarriage to the former spouse. Revocation of certain nonprobate transfers is provided under RCW 11.07.010.

(2) This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after the effective date of this act.

Sec. 12. RCW 11.12.040 and 1965 c 145 s 11.12.040 are each amended to read as follows:

(1) A will, or any part thereof, can be revoked:

((1)) (a) By a ~~((written))~~ subsequent will that revokes, or partially revokes, the prior will expressly or by inconsistency; or

((2)) (b) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator ~~((himself))~~ or by another person in ~~((his))~~ the presence and by ~~((his))~~ the direction of the testator. If such act is done by any person other than the testator, the direction of the

testator and the facts of such injury or destruction must be proved by two witnesses.

(2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent.

Sec. 13. RCW 11.12.080 and 1965 c 145 s 11.12.080 are each amended to read as follows:

(1) If, after making any will, the testator shall (~~duly make and~~) execute a (~~second~~) later will that wholly revokes the former will, the destruction, cancellation, or revocation of (~~such second~~) the later will shall not revive the (~~first~~) former will, unless it was the testator's intention to revive it.

(2) Revocation of a codicil shall revive a prior will or part of a prior will that the codicil would have revoked had it remained in effect at the death of the testator, unless it was the testator's intention not to revive the prior will or part.

(3) Evidence that revival was or was not intended includes, in addition to a writing by which the later will or codicil is revoked, the circumstances of the revocation or contemporary or subsequent declarations of the testator.

Sec. 14. RCW 11.12.110 and 1965 c 145 s 11.12.110 are each amended to read as follows:

Unless otherwise provided, when any (~~estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee~~) property shall be given under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent leaving descendants who survive the decedent, those descendants shall take that property as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally(7) or, if of unequal degree, then those of more remote degree shall take by representation with respect to (~~such~~) the predeceased (~~devisee or legatee. A spouse is not a relative under the provisions of this section~~) issue.

Sec. 15. RCW 11.12.120 and 1974 ex.s. c 117 s 51 are each amended to read as follows:

(~~Whenever any person having died leaving~~) (1) If a will (~~which has been admitted to probate or established by an adjudication of testacy, shall by said will have given, devised or bequeathed unto any person, a legacy or a devise upon the condition that said person survive him, and not otherwise, such legacy or devise shall lapse and fall into the residue of said estate to be distributed according to the residuary clause, if there be one, of said will, and if there be~~

none then according to the laws of descent, unless said legatee or devisee, as the case may be, or his heirs, personal representative, or someone in behalf of such legatee or devisee, shall appear before the court which is administering said estate within three years from and after the date the said will was admitted to probate or established by an adjudication of testacy, and prove to the satisfaction of the court that the said legatee or devisee, as the case may be, did in fact survive the testator)) makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(2) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, and subject to RCW 11.12.110, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(3) The personal representative of the testator, a person who would be affected by the lapse or distribution of a gift under this section, or a guardian ad litem or other representative appointed to represent the interests of a person so affected may petition the court for a determination under this section, and the petition must be heard under the procedures of chapter 11.96 RCW.

Sec. 16. RCW 11.12.160 and 1965 c 145 s 11.12.160 are each amended to read as follows:

~~((All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.))~~

(1) An interested witness to a will is one who would receive a gift under the will.

(2) A will or any of its provisions is not invalid because it is signed by an interested witness. Unless there are at least two other subscribing witnesses to the will who are not interested witnesses, the fact that the will makes a gift to a subscribing witness creates a rebuttable presumption that the witness procured the gift by duress, menace, fraud, or undue influence.

(3) If the presumption established under subsection (2) of this section applies and the interested witness fails to rebut it, the interested witness shall take so

much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established.

(4) The presumption established under subsection (2) of this section has no effect other than that stated in subsection (3) of this section.

Sec. 17. RCW 11.12.180 and 1965 c 145 s 11.12.180 are each amended to read as follows:

~~((If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.))~~ The Rule in Shelley's Case is abolished as a rule of law and as a rule of construction. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the property passes to those persons, including the state under chapter 11.08 RCW, that would succeed to the designated individual's estate under chapter 11.04 RCW. The property must pass to those persons as if the designated individual had died when the distribution or transfer of the future interest was to take effect in possession or enjoyment. For purposes of this section and section 18 of this act, the designated individual's surviving spouse is deemed to be an heir, regardless of whether the surviving spouse has remarried.

NEW SECTION. Sec. 18. A new section is added to chapter 11.12 RCW to read as follows:

The Doctrine of Worthier Title is abolished as a rule of law and as a rule of construction. However, the Doctrine of Worthier Title is preserved as a rule of construction if:

- (1) A grantor has established in inter vivos trust of real property;
- (2) The grantor has expressly reserved a reversion to himself or herself; and
- (3) The words "heirs" or "heirs at law" are used by the grantor to describe the quality of the grantor's title in the reversion as an estate in fee simple in the event that the property reverts to the grantor.

In all other cases, language in a governing instrument describing the beneficiaries of a donative disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

NEW SECTION. Sec. 19. (1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities,

claims, the asset's fair share of expenses of administration, and the asset's share of estate taxes under chapter 83.110 RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative shall give notice to the beneficiary, in the manner provided in chapter 11.96 RCW, that the beneficiary is liable to account under this section.

(2) The following rules govern in applying subsection (1) of this section:

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(b) A beneficiary of property held in joint tenancy form with right of survivorship, including without limitation United States savings bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(c) A beneficiary of payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(d) A beneficiary of deeds or conveyances made by the decedent if possession has been postponed until the death of the decedent takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(e) A trust for the decedent's use of which the decedent is the grantor is subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the same extent as the trust was subject to claims of the decedent's creditors immediately before death under RCW 19.36.020.

(f) A trust not for the use of the grantor but of which the decedent is the grantor and that becomes effective or irrevocable only upon the decedent's death is subject to the decedent's claims, liabilities, estate taxes, and expenses of administration as described in subsection (1) of this section.

(g) Anything in this section to the contrary notwithstanding, nonprobate assets that existed as community property immediately before the decedent's

death are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(h) The liability of a beneficiary of life insurance is governed by chapter 48.18 RCW.

(i) The liability of a beneficiary of pension or retirement employee benefits is governed by chapter 6.15 RCW.

(j) An inference may not be drawn from (a) through (i) of this subsection that a beneficiary of nonprobate assets other than those assets specifically described in (a) through (i) of this subsection does or does not take the assets subject to claims, liabilities, estate taxes, and administration expenses as described in subsection (1) of this section.

(3) Nothing in this section derogates from the rights of a person interested in the estate to recover tax under chapter 83.110 RCW or from the liability of any beneficiary for estate tax under chapter 83.110 RCW.

Sec. 20. RCW 11.20.070 and 1965 c 145 s 11.20.070 are each amended to read as follows:

~~((Whenever any will is lost or destroyed, the court may take proof of the execution and validity of such will and establish it, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of the court.~~

~~No will shall be allowed to be proved as a lost or destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, canceled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed))~~

(1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative may be appointed by the court in the same

manner as is herein provided with reference to original wills presented to the court for probate.

Sec. 21. RCW 11.24.010 and 1971 c 7 s 1 are each amended to read as follows:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. ~~((Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.))~~ Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

If no person shall appear within the time ~~((aforesaid))~~ under this section, the probate or rejection of such will shall be binding and final.

Sec. 22. RCW 11.24.040 and 1965 c 145 s 11.24.040 are each amended to read as follows:

If, upon the trial of said issue, it shall be decided that the will or a part of it is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will or part and probate thereof shall be annulled and revoked ~~((and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator))~~ and to that extent the powers of the personal representative shall cease, but the personal representative shall not be liable for any act done in good faith previous to such annulling or revoking.

Sec. 23. RCW 11.28.120 and 1985 c 133 s 1 are each amended to read as follows:

Administration of ~~((the))~~ an estate ~~((of))~~ if the ~~((person-dying))~~ decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving ~~((husband or wife))~~ spouse, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney in fact appointed by the decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and nonprobate assets.

(4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(5) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

~~((4))~~ (6) One or more of the principal creditors.

~~((5))~~ (7) If the persons so entitled shall fail for more than forty days after the death of the ~~((intestate))~~ decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there ~~((are))~~ is no ~~((relatives or))~~ next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate.

Sec. 24. RCW 11.28.237 and 1977 ex.s. c 234 s 6 are each amended to read as follows:

Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause.

Sec. 25. RCW 11.40.010 and 1991 c 5 s 1 are each amended to read as follows:

Every personal representative shall, after appointment and qualification, give a notice to the creditors of the deceased, stating such appointment and qualification as personal representative and requiring all persons having claims against the deceased to serve the same on the personal representative or the estate's attorney of record, and file an executed copy thereof with the clerk of the court, within four months after the date of the first publication of such notice described in this section or within four months after the date of the filing of the copy of such notice with the clerk of the court, whichever is the later, or within the time otherwise provided in RCW 11.40.013. The four-month time period after the later of the date of the first publication of the notice to creditors or the date of the filing of such notice with the clerk of the court is referred to in this chapter as the "four-month time limitation." Such notice shall be given as follows:

(1) The personal representative shall give actual notice, as provided in RCW 11.40.013, to such creditors who become known to the personal representative within such four-month time limitation;

(2) The personal representative shall cause such notice to be published once in each week for three successive weeks in the county in which the estate is being administered; and

(3) The personal representative shall file a copy of such notice with the clerk of the court.

Except as otherwise provided in RCW 11.40.011 or 11.40.013, any claim not filed within the four-month time limitation shall be forever barred, if not already barred by any otherwise applicable statute of limitations. This bar is effective as to claims against both the decedent's probate assets and nonprobate assets as described in section 19 of this act. Proof by affidavit of the giving and publication of such notice shall be filed with the court by the personal representative.

Acts of a notice agent in complying with chapter . . . , Laws of 1994 (this act) may be adopted and ratified by the personal representative as if done by the personal representative in complying with this chapter, except that if at the time of the appointment and qualification of the personal representative a notice agent had commenced nonprobate notice to creditors under chapter 11.— RCW (sections 31 through 48 of this act), the personal representative shall give published notice as provided in section 48 of this act.

Sec. 26. RCW 11.40.013 and 1989 c 333 s 4 are each amended to read as follows:

The actual notice described in RCW 11.40.010(1), as to creditors becoming known to the personal representative within the four-month time limitation, shall be given the creditors by personal service or regular first class mail, addressed to the creditor's last known address, postage prepaid. The actual notice shall be given before the later of the expiration of the four-month time limitation or thirty days after any creditor became known to the personal representative within the four-month time limitation. Any known creditor is barred unless the creditor has filed a claim, as otherwise provided in this chapter, within the four-month time limitation or within thirty days following the date of actual notice to that creditor, whichever is later. If notice is given by mail, the date of mailing shall be the date of notice. This bar is effective as to claims against both the decedent's probate assets and nonprobate assets.

Sec. 27. RCW 11.40.015 and 1989 c 333 s 6 are each amended to read as follows:

and as quickly as possible, without sacrifice to the probate or nonprobate estate. ((He)) The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. ((He)) The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

NEW SECTION. **Sec. 31.** (1) Subject to the conditions stated in this section and if no personal representative has been appointed and qualified in the decedent's estate in Washington, the following members of a group, defined as the "qualified group", are qualified to give "nonprobate notice to creditors" of the decedent:

- (a) Decedent's surviving spouse;
- (b) The person appointed in an agreement made under chapter 11.96 RCW to give nonprobate notice to creditors of the decedent;
- (c) The trustee, except a testamentary trustee under the will of the decedent not probated in another state, having authority over any of the property of the decedent; and
- (d) A person who has received any property of the decedent by reason of the decedent's death.

(2) The "included property" means the property of the decedent that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death and that either:

- (a) Constitutes a nonprobate asset; or
- (b) Has been received, or is entitled to be received, either under chapter 11.62 RCW or by the personal representative of the decedent's probate estate administered outside the state of Washington, or both.

(3) The qualified person shall give the nonprobate notice to creditors. The "qualified person" must be:

- (a) The person in the qualified group who has received, or is entitled to receive, by reason of the decedent's death, all, or substantially all, of the included property; or
- (b) If there is no person in (a) of this subsection, then the person who has been appointed by those persons, including any successors of those persons, in the qualified group who have received, or are entitled to receive, by reason of the decedent's death, all, or substantially all, of the included property.

(4) The requirement in subsection (3) of this section of the receipt of all, or substantially all, of the included property is satisfied if:

- (a) The person described in subsection (3)(a) of this section at the time of the filing of the declaration and oath referred to in subsection (5) of this section in reasonable good faith believed that the person had received, or was entitled to receive, by reason of the decedent's death, all, or substantially all, of the included property; or

(b) The persons described in subsection (3)(b) of this section at the time of their entry into the agreement under chapter 11.96 RCW in which they appoint the person to give the nonprobate notice to creditors in reasonable good faith believed that they had received, or were entitled to receive, by reason of the decedent's death, all, or substantially all, of the included property.

(5) The "notice agent" means the qualified person who:

(a) Files a declaration and oath with the clerk of the superior court in a county in which probate may be commenced regarding the decedent as provided in RCW 11.96.050(2);

(b) Pays a filing fee to the clerk equal in amount to the filing fee charged by the clerk for the probate of estates; and

(c) Receives from the clerk a cause number.

The county in which the notice agent files the declaration is the "notice county." The declaration and oath must be made in affidavit form or under penalty of perjury under the laws of the state in the form provided in RCW 9A.72.085 and must state that the person making the declaration believes in reasonable good faith that the person is qualified under this chapter to act as the notice agent and that the person faithfully will execute the duties of the notice agent as provided in this chapter.

(6) The following persons may not act as notice agent:

(a) Corporations, trust companies, and national banks, except:

(i) Professional service corporations that are regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(ii) Other corporations, trust companies, and national banks that are authorized to do trust business in this state;

(b) Minors;

(c) Persons of unsound mind; or

(d) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude.

(7) A person who has given notice under this chapter and who thereafter becomes of unsound mind or is convicted of a crime or misdemeanor involving moral turpitude is no longer qualified to act as notice agent under this chapter. The disqualification does not bar another person, otherwise qualified, from acting as notice agent under this chapter.

(8) A nonresident may act as notice agent if the nonresident appoints an agent who is a resident of the notice county or who is attorney of record for the notice agent upon whom service of all papers may be made. The appointment must be made in writing and filed by the clerk of the notice county with the other papers relating to the notice given under this chapter.

(9) The powers and authority of a notice agent cease, and the office of notice agent becomes vacant, upon the appointment and qualification of a personal representative for the estate of the decedent. Except as provided in

section 48 of this act, the cessation of the powers and authority does not affect a published notice under this chapter if the publication commenced before the cessation and does not affect actual notice to creditors given by the notice agent before the cessation.

NEW SECTION. Sec. 32. (1) The notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of a copy of the notice with the clerk of the superior court for the notice county, the notice agent has no knowledge of the appointment and qualification of a personal representative in the decedent's estate in the state of Washington or of another person becoming a notice agent; and

(b) According to the records of the clerk of the superior court for the notice county as of 8:00 a.m. on the date of the filing, no personal representative of the decedent's estate had been appointed and qualified and no cause number regarding the decedent had been issued to any other notice agent by the clerk under section 31 of this act.

(2) The notice must state that all persons having claims against the decedent shall: (a) Serve the same on the notice agent if the notice agent is a resident of the state of Washington upon whom service of all papers may be made, or on the nonprobate resident agent for the notice agent, if any, or on the attorneys of record of the notice agent at their respective address in the state of Washington; and (b) file an executed copy of the notice with the clerk of the superior court for the notice county, within: (i) (A) Four months after the date of the first publication of the notice described in this section; or (B) four months after the date of the filing of the copy of the notice with the clerk of the superior court for the notice county, whichever is later; or (ii) the time otherwise provided in section 35 of this act. The four-month time period after the later of the date of the first publication of the notice to creditors or the date of the filing of the notice with the clerk of the court is referred to in this chapter as the "four-month time limitation."

(3) The notice agent shall declare in the notice in affidavit form or under the penalty of perjury under the laws of the state of Washington as provided in RCW 9A.72.085 that: (a) The notice agent is entitled to give the nonprobate notice under subsection (1) of this section; and (b) the notice is being given by the notice agent as permitted by this section.

(4) The notice agent shall sign the notice and file it with the clerk of the superior court for the notice county. The notice must be given as follows:

(a) The notice agent shall give actual notice as to creditors of the decedent who become known to the notice agent within the four-month time limitation as required in section 35 of this act;

(b) The notice agent shall cause the notice to be published once in each week for three successive weeks in the notice county; and

(c) The notice agent shall file a copy of the notice with the clerk of the superior court for the notice county.

(5) A claim not filed within the four-month time limitation is forever barred, if not already barred by an otherwise applicable statute of limitations, except as provided in section 33 or 35 of this act. The bar is effective to bar claims against both the probate estate of the decedent and nonprobate assets that were subject to satisfaction of the decedent's general liabilities immediately before the decedent's death. If a notice to the creditors of a decedent is published by more than one notice agent and the notice agents are not acting jointly, the four-month time limitation means the four-month time limitation that applies to the notice agent who first publishes the notice. Proof by affidavit or perjury declaration made under RCW 9A.72.085 of the giving and publication of the notice must be filed with the clerk of the superior court for the notice county by the notice agent.

NEW SECTION. Sec. 33. The time limitations under this chapter for serving and filing claims do not accrue to the benefit of a liability or casualty insurer as to claims against either the decedent or the marital community of which the decedent was a member, or both, and:

(1) The claims, subject to applicable statutes of limitation, may at any time be: (a) Served on the duly acting notice agent, the duly acting resident agent for the notice agent, or on the attorney for either of them; and (b) filed with the clerk of the superior court for the notice county; or

(2) If there is no duly acting notice agent or resident agent for the notice agent, the claimant as a creditor shall proceed as provided in chapter 11.40 RCW. However, if no personal representative ever has been appointed for the decedent, a personal representative must be appointed as provided in chapter 11.28 RCW and the estate opened, in which case the claimant then shall proceed as provided in chapter 11.40 RCW.

A claim may be served and filed as provided in this section, notwithstanding that there is no duly acting notice agent and that no personal representative previously has been appointed. However, the amount of recovery under the claim may not exceed the amount of applicable insurance coverages and proceeds, and the claim so served and filed may not constitute a cloud or lien upon the title to the assets of the decedent or delay or prevent the transfer or distribution of assets of the decedent. This section does not serve to extend the applicable statute of limitations regardless of whether a declaration and oath has been filed by a notice agent as provided in section 31 of this act.

NEW SECTION. Sec. 34. The notice agent shall exercise reasonable diligence to discover, within the four-month time limitation, reasonably ascertainable creditors of the decedent. The notice agent is deemed to have exercised reasonable diligence to ascertain the creditors upon:

(1) Conducting, within the four-month time limitation, a reasonable review of the decedent's correspondence including correspondence received after the date of death and financial records including checkbooks, bank statements,

income tax returns, and similar materials, that are in the possession of, or reasonably available to, the notice agent; and

(2) Having made, with regard to claimants, inquiry of the nonprobate takers of the decedent's property and of the presumptive heirs, devisees, and legatees of the decedent, all of whose names and addresses are known, or in the exercise of reasonable diligence should have been known, to the notice agent.

If the notice agent conducts the review and makes an inquiry, the notice agent is presumed to have exercised reasonable diligence to ascertain creditors of the decedent, and creditors not ascertained in the review or in an inquiry are presumed not reasonably ascertainable. These presumptions may be rebutted only by clear, cogent, and convincing evidence. The notice agent may evidence the review and inquiry by filing an affidavit or declaration under penalty of perjury form as provided in RCW 9A.72.085 to the effect in the nonprobate proceeding in the notice county. The notice agent also may petition the superior court of the notice county for an order declaring that the notice agent has made a review and inquiry and that only creditors known to the notice agent after the review and inquiry are reasonably ascertainable. The petition and hearing must be under the procedures provided in chapter 11.96 RCW, and the notice specified under RCW 11.96.100 must also be given by publication.

NEW SECTION. Sec. 35. The actual notice described in section 32(4)(a) of this act, as to a creditor becoming known to the notice agent within the four-month time limitation, must be given the creditor by personal service or regular first class mail, addressed to the creditor's last known address, postage prepaid. The actual notice must be given before the later of the expiration of the four-month time limitation or thirty days after a creditor became known to the notice agent within the four-month time limitation. A known creditor is barred unless the creditor has filed a claim, as provided in this chapter, within the four-month time limitation or within thirty days following the date of actual notice to that creditor, whichever is later. If notice is given by mail, the date of mailing is the date of notice. This bar is effective as to claims against the included property as defined in section 31 of this act.

NEW SECTION. Sec. 36. (1) Whether or not notice under section 32 of this act has been given or should have been given, if no personal representative has been appointed and qualified, a person having a claim against the decedent who has not filed the claim within eighteen months from the date of the decedent's death is forever barred from making a claim against the decedent, or commencing an action against the decedent, if the claim or action is not already barred by any otherwise applicable statute of limitations. However, this eighteen-month limitation does not apply to:

- (a) Claims described in section 33 of this act;
- (b) A claim if, during the eighteen-month period following the date of death, partial performance has been made on the obligation underlying the claim, and

the notice agent has not given the actual notice described in section 32(4)(a) of this act; or

(c) Claims if, within twelve months after the date of death:

(i) No notice agent has given the published notice described in section 32(4)(b) of this act; and

(ii) No personal representative has given the published notice described in RCW 11.40.010(2).

Any otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(2) Claims referred to in this section must be filed if there is no duly appointed, qualified, and acting personal representative and there is a duly declared and acting notice agent or resident agent for the notice agent. The claims, subject to applicable statutes of limitation, may at any time be served on the duly declared and acting notice agent or resident agent for the notice agent, or on the attorney for either of them.

(3) A claim to be filed under this chapter if there is no duly appointed, qualified, and acting personal representative but there is a duly declared and acting notice agent or resident agent for the notice agent and which claim is not otherwise barred under this chapter must be made in the form and manner provided under section 32 of this act, as if the notice under that section had been given.

NEW SECTION. Sec. 37. Notice under section 32 of this act must be in substantially the following form:

In the Matter of)
) No.
)
) NONPROBATE NOTICE TO CREDITORS
 Deceased.)
)

....., the undersigned Notice Agent, has elected to give notice to creditors of the decedent above named under section 32 of this act. As of the date of the filing of a copy of this notice with the Clerk of this Court, the Notice Agent has no knowledge of the appointment and qualification of a personal representative in the decedent's estate in the state of Washington or of any other person becoming a Notice Agent. According to the records of the Clerk of this Court as of 8:00 a.m. on the date of the filing of this notice with the Clerk, no personal representative of the decedent's estate had been appointed and qualified and no cause number regarding the decedent had been issued to any other Notice Agent by the Clerk of this Court under section 31 of this act.

Persons having claims against the decedent named above must, before the time the claims would be barred by any otherwise applicable statute of limitations, serve their claims on: The notice agent if the Notice Agent is a resident of the state of Washington upon whom service of all papers may be

made; the Nonprobate Resident Agent for the Notice Agent, if any; or the attorneys of record for the Notice Agent at the respective address in the state of Washington listed below, and file an executed copy of the claim with the Clerk of this Court within four months after the date of first publication of this notice, or within four months after the date of the filing of the copy of this notice with the Clerk of the Court, whichever is later, or, except under those provisions included in section 33 or 35 of this act, the claim will be forever barred. This bar is effective as to all assets of the decedent that were subject to satisfaction of the decedent's general liabilities immediately before the decedent's death regardless of whether those assets are or would be assets of the decedent's probate estate or nonprobate assets of the decedent.

Date of filing of this notice with the
Clerk of the Court:

Date of first publication of this notice:

The Notice Agent declares under penalty of perjury under the laws of the State of Washington on, 19. . . at [City], [State] that the foregoing is true and correct.

.....
Notice Agent [signature]
[address in Washington, if any]

.....
Nonprobate Resident Agent [if appointed]
[address in Washington]

.....
Attorney for Notice Agent
[address in Washington]
[telephone]

NEW SECTION. Sec. 38. RCW 11.40.020 applies to claims subject to this chapter.

NEW SECTION. Sec. 39. (1) Property of the decedent that was subject to the satisfaction of the decedent's general liabilities immediately before the decedent's death is liable for claims. The property includes, but is not limited to, property of the decedent that is includable in the decedent's probate estate, whether or not there is a probate administration of the decedent's estate.

(2) A claim approved by the notice agent, and a judgment on a claim first prosecuted against a notice agent, may be paid only out of assets received as a result of the death of the decedent by the notice agent or by those appointing the notice agent under chapter 11.96 RCW, except as may be provided by agreement under RCW 11.96.170 or by court order under RCW 11.96.070.

NEW SECTION. Sec. 40. (1) The notice agent shall approve or reject claims no later than by the end of a period that is two months after the end of the four-month time limitation defined as the "review period."

(2) The notice agent may approve a claim, in whole or in part.

(3) If the notice agent rejects a claim, in whole or in part, the notice agent shall notify the claimant of the rejection and file in the office of the clerk of the court in the notice county an affidavit or declaration under penalty of perjury under RCW 9A.72.085 showing the notification and the date of the notification. The notification must be by personal service or certified mail addressed to the claimant at the claimant's address as stated in the claim. If a person other than the claimant signed the claim for or on behalf of the claimant, and the person's business address as stated in the claim is different from that of the claimant, notification of the rejection also must be made by personal service or certified mail upon that person. The date of the postmark is the date of the notification. The notification of the rejection must advise the claimant, and the person making claim on his, her, or its behalf, if any, that the claimant must bring suit in the proper court in the notice county against the notice agent: (a) Within thirty days after notification of rejection if the notification is made during or after the review period; or (b) before expiration of thirty days after the end of the four-month time limitation, if the notification is made during the four-month time limitation, and that otherwise the claim is forever barred.

(4) A claimant whose claim either has been rejected by the notice agent or has not been acted upon within twenty days of written demand for the action having been given to the notice agent by the claimant during or after the review period must commence an action against the notice agent in the proper court in the notice county to enforce the claim of the claimant within the earlier of:

(a) If the notice of the rejection of the claim has been sent as provided in subsection (3) of this section: The time for filing an action on a rejected claim is as provided in subsection (3) of this section; or

(b) If written demand for approval or rejection is made on the notice agent before the claim is rejected: Within 30 days following the end of the twenty-day written demand period where the demand period ends during or after the review period; otherwise the claim is forever barred.

(5) The notice agent may, either before or after rejection of a claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated.

(6) A personal representative of the decedent's estate may revoke either or both of: (a) The rejection of a claim that has been rejected by the notice agent; or (b) the approval of a claim that has been either approved or compromised by the notice agent, or both.

(7) If a notice agent pays a claim that subsequently is revoked by a personal representative of the decedent, the notice agent may file a claim in the decedent's estate for the notice agent's payment, and the claim may be allowed or rejected as other claims, at the election of the personal representative.

(8) If the notice agent has not received substantially all assets of the decedent that are liable for claims, then although an action may be commenced on a rejected claim by a creditor against the notice agent, the notice agent,

notwithstanding any provision in this chapter, may only make an appearance in the litigation. The Notice Agent may not answer the action, but must, instead, cause a petition to be filed for the appointment of a personal representative of the decedent within thirty days of the service of the creditor's summons and complaint on the notice agent. A judgment may not be entered in an action brought by a creditor against the notice agent earlier than twenty days after the duly appointed, qualified, and acting personal representative of the decedent has been substituted in that action for the notice agent.

NEW SECTION. Sec. 41. If a claim has been filed and presented to a notice agent, and a part of the claim is allowed, the amount of the allowance must be stated in the indorsement. If the creditor refuses to accept the amount so allowed in satisfaction of the claim, the creditor may not recover costs in an action the creditor may bring against the notice agent and against any substituted personal representative unless the creditor recovers a greater amount than that offered to be allowed, exclusive of interest and costs.

NEW SECTION. Sec. 42. A debt of a decedent for whose estate no personal representative has been appointed must be paid in the following order by the notice agent from the assets of the decedent that are subject to the payment of claims as provided in section 39 of this act:

(1) Costs of administering the assets subject to the payment of claims, including a reasonable fee to the notice agent, the resident agent for the notice agent, if any, reasonable attorneys' fees for the attorney for each of them, filing fees, publication costs, mailing costs, and similar costs and fees.

(2) Funeral expenses in a reasonable amount.

(3) Expenses of the last sickness in a reasonable amount.

(4) Wages due for labor performed within sixty days immediately preceding the death of the decedent.

(5) Debts having preference by the laws of the United States.

(6) Taxes or any debts or dues owing to the state.

(7) Judgments rendered against the decedent in the decedent's lifetime that are liens upon real estate on which executions might have been issued at the time of the death of the decedent and debts secured by mortgages in the order of their priority. However, the real estate is subject to the payment of claims as provided in section 40 of this act.

(8) All other demands against the assets subject to the payment of claims as provided in section 40 of this act.

A claim of the notice agent or other person who has received property by reason of the decedent's death may not be paid by the notice agent unless all other claims that have been filed under this chapter, and all debts having priority to the claim, are paid in full or otherwise settled by agreement, regardless of whether the other claims are allowed or rejected, or partly allowed or partly rejected. In the event of the probate of the decedent's estate, the personal representative's payment from estate assets of the claim of the notice agent or

other person who has received property by reason of the decedent's death is not affected by the priority payment provisions of this section.

NEW SECTION. Sec. 43. The notice agent may not allow a claim that is barred by the statute of limitations.

NEW SECTION. Sec. 44. A holder of a claim against a decedent may not maintain an action on the claim against a notice agent, unless the claim has been first presented as provided in this chapter. This chapter does not affect RCW 82.32.240.

NEW SECTION. Sec. 45. The time during which there is a vacancy in the office of notice agent is not included in a limitation prescribed in this chapter.

NEW SECTION. Sec. 46. If a judgment has been rendered against a decedent in the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent, but the judgment must be presented in the form of a claim to the notice agent, if any, as any other claim. The claim need not be supported by the affidavit of the claimant. If the claim is justly due and unsatisfied, it must be paid in due course in accordance with this chapter for the payment of claims. However, if the judgment is a lien on property classified within the definition of the included property in section 31 of this act, the property may be sold for the satisfaction of the judgment, and the officer making the sale shall account to the notice agent for any surplus.

NEW SECTION. Sec. 47. The personal claim of a Notice Agent, as a creditor of the decedent, must be authenticated by affidavit, and must be filed and presented for allowance to the superior court in the notice county. The allowance of the claim by the court is sufficient evidence of the correctness of the claim.

NEW SECTION. Sec. 48. In case the office of notice agent becomes vacant for any reason, including resignation, death, removal, or replacement, after notice by publication has been commenced as provided in section 32 of this act, the personal representative of the decedent or the successor notice agent shall publish notice of the vacancy and succession for two successive weeks in a legal newspaper published in the notice county. The time between the commencement of the vacancy and the publication by the successor notice agent or personal representative must be added to the time within which claims must be filed: (1) As fixed by the first published nonprobate notice to creditors; and (2) as extended in the case of actual notice under section 35 of this act, unless the time expired before the vacancy. Notice is not required if the period for filing claims has expired during the time that the former notice agent was qualified.

Sec. 49. RCW 11.56.050 and 1965 c 145 s 11.56.050 are each amended to read as follows:

If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real

estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. ~~((The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised.))~~ After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate.

Sec. 50. RCW 11.68.010 and 1977 ex.s. c 234 s 18 are each amended to read as follows:

Subject to the provisions of this chapter, if the estate of a decedent, who died either testate or intestate, is solvent taking into account both probate and nonprobate assets of the decedent, and if the personal representative is other than a creditor of the decedent not designated as personal representative in the decedent's will, such estate shall be managed and settled without the intervention of the court; the fact of solvency shall be established by the entry of an order of solvency. An order of solvency may be entered at the time of the appointment of the personal representative or at any time thereafter where it appears to the court by the petition of the personal representative, or the inventory filed, and/or other proof submitted, that the estate of the decedent is solvent, and that notice of the application for an order of solvency has been given to those persons entitled thereto when required by RCW 11.68.040 as now or hereafter amended.

Sec. 51. RCW 11.96.009 and 1985 c 31 s 2 are each amended to read as follows:

(1) The superior court shall have original subject-matter jurisdiction over ~~((probates in the following instances))~~ the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

- (a) When a resident of the state dies; or
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

(2) The superior court shall have original subject-matter jurisdiction over trusts and ~~((trust))~~ matters relating to trusts.

(3) The superior courts in the exercise of their jurisdiction of matters of ~~((probate and))~~ trusts and estates shall have the power to probate or refuse to probate wills, appoint personal representatives ~~((of deceased, incompetent, or disabled persons and))~~, administer and settle ~~((all such estates, and))~~ the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' estates only containing nonprobate assets, administer and settle matters that relate to nonprobate assets and arise under chapter 11.--- (section 19 of this act) or 11.--- RCW (sections 31 through 48 of this act),

administer and settle all trusts and trust matters, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction.

Sec. 52. RCW 11.96.020 and 1985 c 31 s 3 are each amended to read as follows:

It is the intention of ~~((this title))~~ the legislature that the courts ~~((mentioned))~~ shall have full and ample power and authority under this title to:

(1) Administer and settle ~~((all estates of decedents and incompetent and disabled persons in this title mentioned and to))~~ the affairs and the estates of all incapacitated, missing, and deceased persons in accordance with this title;

(2) Administer and settle all trusts and trust matters; and

(3) Administer and settle matters arising with respect to nonprobate assets under chapters 11.— (section 19 of this act) and 11.— RCW (sections 31 through 48 of this act).

If the provisions of this title with reference to the administration and settlement of such ~~((estates or trusts))~~ matters should in any cases and under any circumstances be inapplicable ~~((or))~~, insufficient, or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such ~~((estates or trusts may be by the court administered upon and settled))~~ matters may be administered and settled by the court.

Sec. 53. RCW 11.96.050 and 1985 c 31 s 6 are each amended to read as follows:

For purposes of venue in proceedings involving: The probate of wills; the administration and disposition of estates of incapacitated, missing, or deceased individuals, including but not limited to estates only containing nonprobate assets; or trusts and trust matters, the following shall apply:

(1) Proceedings under Title 11 RCW pertaining to trusts shall be commenced ~~((either))~~:

(a) In the superior court of the county in which the situs of the trust is located as provided in RCW 11.96.040; or

~~((In the superior court of the county in which a trustee resides or has its principal place of business; or~~

~~((e)))~~ With respect to testamentary trusts, in the superior court of the county where letters testamentary were granted to a personal representative~~((, and in the absence of))~~ or, where no such letters have been granted to a personal representative, then in any county where letters testamentary could have been granted in accordance with subsection (2) of this section.

(2) Wills shall be proven, letters testamentary or of administration granted, and other proceedings pertaining to the probate of wills, the administration and disposition of estates including but not limited to estates containing only

nonprobate assets under Title 11 RCW (~~((pertaining to probate))~~) shall be commenced~~((, either))~~:

- (a) In the county in which the decedent was a resident at the time of death;
- (b) In the county in which the decedent died, or in which any part of the estate may be, if the decedent was not a resident of this state; ~~((or))~~
- (c) In the county in which any part of the estate may be, if the decedent ~~((having))~~ died out-of-state~~((;))~~ and was not ~~((having been))~~ a resident ~~((in))~~ of this state at the time of death; or

(d) In the county in which any nonprobate asset may be, if the decedent died out-of-state, was not a resident of this state at the time of death, and left no assets subject to probate administration in this state.

(3) No action undertaken is defective or invalid because of improper venue if the court has jurisdiction of the matter.

Sec. 54. RCW 11.96.060 and 1985 c 31 s 7 are each amended to read as follows:

(1) Any action against the trustee of an express trust, excluding those trusts excluded from the definition of express trusts under RCW 11.98.009, but including all express trusts, whenever executed, for any breach of fiduciary duty, must be brought within three years from the earlier of (a) the time the alleged breach was discovered or reasonably should have been discovered, (b) the discharge of a trustee from the trust as provided in RCW ~~((11.98.040))~~ 11.98.041, or (c) the time of termination of the trust or the trustee's repudiation of the trust.

(2) Any action by an heir, legatee, or other interested party, to whom proper notice was given if required, against a personal representative for alleged breach of fiduciary duty must be brought prior to discharge of the personal representative.

(3) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of any statute of limitations stated in subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under chapter 11.96 RCW, is not tolled if the unascertained or unborn heir, beneficiary, or class of persons, or minor~~((, incompetent, or disabled))~~ or incapacitated person, or person identified in RCW 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

~~((4) Notwithstanding subsections (2) and (3) of this section, any cause of action against a trustee of an express trust, as provided for in subsection (1) of this section is not barred by the statute of limitations if it is brought within three years from January 1, 1985. In addition, any action as specified in subsection (2) of this section against the personal representative is not barred by this statute of limitations if it is brought within one year of January 1, 1985.))~~

Sec. 55. RCW 11.96.070 and 1990 c 179 s 1 are each amended to read as follows:

~~((A trustee, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person.))~~ (1) A person with an interest in or right respecting the administration, settlement, or disposition of an interest in a trust or in the estate of an incapacitated, missing, or deceased person may have a judicial proceeding for the declaration of rights or legal relations ((in respect to the trust or estate)) under this title including but not limited to the following:

~~((1) To ascertain))~~ (a) The ascertaining of any class of creditors, devisees, legatees, heirs, next of kin, or others;

~~((2) To direct))~~ (b) The ordering of the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

~~((3) To determine))~~ (c) The determination of any question arising in the administration of the estate or trust, including without limitation questions of construction of wills and other writings;

~~((4) To confer upon))~~ (d) The grant to the personal representatives or trustees of any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

~~((5) To amend or conform))~~ (e) The modification of the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; ((or

~~(6) To amend or conform))~~ (f) The modification of the will or the trust instrument in the manner required to qualify any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code as required by final regulations and rulings of the United States treasury department or internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; ((or

~~(7) To resolve any other matter in this title referencing this judicial proceedings section.))~~ (g) The determination of the persons entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes of any judicial proceeding under this subsection (1) and for the purposes of an agreement under RCW 11.96.170; or

(h) The resolution of any other matter that arises under this title and references this section.

(2) Any person with an interest in or right respecting the administration of a nonprobate asset under this title may have a judicial proceeding for the declaration of rights or legal relations under this title with respect to the nonprobate asset, including without limitation the following:

(a) The ascertaining of any class of creditors or others for purposes of chapter 11.— (section 19 of this act) or 11.— RCW (sections 31 through 48 of this act);

(b) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.— RCW (sections 31 through 48 of this act), or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(c) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(d) The determination of any question arising in the administration under chapter 11.— (section 19 of this act) or 11.— RCW (sections 31 through 48 of this act) of a nonprobate asset;

(e) The determination of the persons entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes of any judicial proceeding under this subsection (2) and for the purposes of an agreement under RCW 11.96.170; and

(f) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title.

(3) The provisions of this chapter apply to disputes arising in connection with estates of (~~incompetents or disabled~~) incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede the otherwise applicable provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56, or 11.60 RCW with respect to any rights or legal obligations that are subject to those chapters.

(4) For the purposes of this section, "a person with an interest in or right respecting the administration, settlement, or disposition of an interest in a trust or in the estate of an incapacitated, missing, or deceased person" includes but is not limited to:

(a) The trustor if living, trustee, beneficiary, or creditor of a trust and, for a charitable trust, the attorney general if acting within the powers granted under RCW 11.110.120;

(b) The personal representative, heir, devisee, legatee, and creditor of an estate;

(c) The guardian, guardian ad litem, and ward of a guardianship, and a creditor of an estate subject to a guardianship; and

(d) Any other person with standing to sue with respect to any of the matters for which judicial proceedings are authorized in subsection (1) of this section.

(5) For the purposes of this section, "any person with an interest in or right respecting the administration of a nonprobate asset under this title" includes but is not limited to:

(a) The notice agent, the resident agent, or a qualified person, as those terms are defined in chapter 11.— RCW (sections 31 through 48 of this act);

(b) The recipient of the nonprobate asset with respect to any matter arising under this title;

(c) Any other person with standing to sue with respect to any matter for which judicial proceedings are authorized in subsection (2) of this section; and

(d) The legal representatives of any of the persons named in this subsection.

Sec. 56. RCW 11.96.080 and 1985 c 31 s 9 are each amended to read as follows:

Unless rules of court or a provision of this title requires otherwise, a judicial proceeding under RCW 11.96.070 may be commenced by petition. The court shall make an order fixing the time and place for hearing the petition. The court shall approve the form and content of the notice. Notice of hearing shall be signed by the clerk of the court.

Sec. 57. RCW 11.96.090 and 1985 c 31 s 10 are each amended to read as follows:

The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations and except for the time of hearings set under RCW 11.96.080. The authority ~~((herein))~~ granted in this section is in addition to the authority vested in the superior courts and superior court commissioners.

Sec. 58. RCW 11.96.100 and 1985 c 31 s 11 are each amended to read as follows:

(1) Subject to RCW 11.96.110, in all judicial proceedings under Title 11 RCW that require notice, such notice shall be personally served ~~((or mailed to each trustee, personal representative, heir, beneficiary including devisees, legatees, and heirs, guardian ad litem, and person having an interest in the trust or estate whose name and address are known to the petitioner))~~ on or mailed to all parties to the dispute at least twenty days prior to the hearing on the petition(¿) unless ~~((otherwise))~~ a different period is provided by statute or ordered by the court under RCW 11.96.080.

(2) Proof of ~~((such))~~ the service or mailing required in this section shall be made by affidavit filed at or before the hearing.

~~((In addition, notice shall also be given to))~~ (3) For the purposes of this section:

(a) When used in connection with a judicial proceeding under RCW 11.96.070(1), "parties to the dispute" means each:

- (i) Trustor if living;
- (ii) Trustee;
- (iii) Personal representative;
- (iv) Heir;
- (v) Beneficiary including devisees, legatees, and trust beneficiaries;
- (vi) Guardian ad litem; or
- (vii) Other person

who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner, and also includes the attorney general if required under RCW 11.110.120.

(b) When used in connection with a judicial proceeding under RCW 11.96.070(2), "parties to the dispute" means each notice agent, if any, or other person, who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner, and also includes the personal representatives of the estate of the owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under section 19 of this act.

(c) "Notice agent" has the meanings given in section 31 of this act.

Sec. 59. RCW 11.9.110 and 1985 c 31 s 12 are each amended to read as follows:

Notwithstanding provisions of this chapter to the contrary, there is compliance with the ~~((notice))~~ requirements of Title 11 RCW for notice to the beneficiaries of, ~~((of))~~ and other persons interested in, an estate ~~((of))~~, a trust, or ~~((to beneficiaries or remaindermen))~~ a nonprobate asset, including without limitation all living persons who may participate in the corpus or income of the trust or estate, if notice is given as follows:

(1) If an interest in an estate ~~((of))~~, trust, or nonprobate asset has been given to persons who compose a certain class upon the happening of a certain event, notice shall be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice.

(2) If an interest in an estate ~~((of))~~, trust, or nonprobate asset has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice shall be given to that living person.

(3) Except as otherwise provided in subsection (2) of this section, if an interest in an estate ~~((of))~~, trust, or nonprobate asset has been given to a person, a class of persons, or both upon the happening of any future event, and the same interest or a share of such interest is to pass to another person, class of persons,

or both, upon the happening of an additional future event, notice shall be given to the living person or persons who would take the interest upon the happening of the first event.

(4) Notice shall be given to persons who would not otherwise be entitled to notice by law if a conflict of interest involving the subject matter of the (~~trust or estate~~) proceeding relating to an estate, trust, or nonprobate asset is known to exist between a person to whom notice is given and a person to whom notice need not be given under Title 11 RCW.

Any action taken by the court is conclusive and binding upon each person receiving actual or constructive notice in the manner provided in this section.

Sec. 60. RCW 11.96.130 and 1985 c 31 s 14 are each amended to read as follows:

All issues of fact (~~joined in probate or trust proceedings~~) in any judicial proceeding under this title shall be tried in conformity with the requirements of the rules of practice in civil actions (~~(- The probate or trust)~~), except as otherwise provided by statute or ordered by the court under RCW 11.96.030 or other applicable law or rules of court. The judicial proceeding may be commenced as a new action or as an action incidental to an existing (~~probate or trust~~) judicial proceeding relating to the same trust or estate or nonprobate asset. Once commenced, the action may be consolidated with an existing (~~probate or trust~~) proceeding or converted to a separate action upon the motion of any party for good cause shown, or by the court on its own motion. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If no jury is demanded, the court shall try the issues (~~joined~~), and sign and file its findings and decision in writing, as provided for in civil actions. Judgment on the (~~issue joined~~) issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

Sec. 61. RCW 11.96.140 and 1985 c 31 s 15 are each amended to read as follows:

Either the superior court or the court on appeal, may, in its discretion, order costs, including (~~attorneys~~) attorneys' fees, to be paid by any party to the proceedings or out of the assets of the estate or trust or nonprobate asset, as justice may require.

Sec. 62. RCW 11.96.160 and 1988 c 202 s 19 are each amended to read as follows:

Any interested party may seek appellate review of any final order, judgment, or decree of the court (~~and such~~) respecting any judicial proceedings under this title. The review shall be in the manner and way provided by law for appeals in civil actions.

Sec. 63. RCW 11.96.170 and 1988 c 29 s 7 are each amended to read as follows:

(1) If ~~((, as to the))~~ all required parties to the dispute agree as to a matter in dispute, the ((trustor, grantor, all parties beneficially interested in the estate or trust with respect to such matter, and any current fiduciary of such estate or trust, who are also included in RCW 11.96.070 and who are entitled to notice under RCW 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or any other matter in Title 11 RCW referencing this nonjudicial resolution procedure, then the)) agreement shall be evidenced by a written agreement executed by all ~~((necessary persons as provided in this section))~~ required parties to the dispute. Those persons may reach an agreement concerning a matter in RCW 11.96.070 ~~((4))~~ (1)(d) as long as those persons, rather than the court, determine that the powers to be conferred are not inconsistent with the provisions or purposes of the will or trust.

(2) If necessary, ~~((the personal representative or trustee))~~ any one or more of the required parties to the dispute may petition the court for the appointment of a special representative to represent a ~~((person interested in the estate or trust who is a minor, incompetent, disabled, or))~~ required party to the dispute who is incapacitated by reason of being a minor or otherwise, who is yet unborn or unascertained, or ((a person)) whose identity or address is unknown. The special representative has authority to enter into a binding agreement under this section on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or ~~((class))~~ classes are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates ~~((or))~~ trusts, or nonprobate assets, as applicable. The special representative shall have no interest in any affected estate ~~((or))~~ trust, or nonprobate asset, and shall not be related to any personal representative, trustee, beneficiary, or other person interested in the estate ~~((or))~~ trust, or nonprobate asset. The special representative is entitled to reasonable compensation for services ~~((which))~~ and, if applicable, that compensation shall be paid from the principal of the estate ~~((or))~~ trust, or nonprobate asset whose beneficiaries are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate ~~((or))~~ trust, or nonprobate asset.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any ~~((person interested in the estate or trust))~~ of the required parties to the dispute, be filed with the court having jurisdiction over the estate ~~((or))~~ trust, nonprobate asset, or other matter affected by the agreement. The person filing the agreement or memorandum shall, within

(d) "Estate" includes the estate of a deceased, missing, or incapacitated person.

Sec. 64. RCW 11.96.180 and 1985 c 31 s 19 are each amended to read as follows:

(1) The court, upon its own motion or on request of ~~((a person interested in the trust or estate))~~ any one or more of the required parties to the dispute as that term is defined in RCW 11.96.170(6)(c), at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, or person whose identity ~~((and))~~ or address ~~((are))~~ is unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

~~(2) ((For the purposes of this section, a trustee is a person interested in the trust and a personal representative is a person interested in an estate.~~

~~(3))~~ The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

~~((4))~~ (3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110.

Sec. 65. RCW 11.98.200 and 1993 c 339 s 2 are each amended to read as follows:

Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW 11.98.200 through 11.98.240 and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, ~~((and other than the decedent's spouse or the testator's spouse where the spouse is the trustee of a trust for which a marital deduction is or was otherwise allowed or allowable, whether or not an appropriate marital deduction election was in fact made,))~~ cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support as described under section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section;

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

(3) Discretionary distributions of either principal or income to satisfy a legal ~~((support))~~ obligation of the trustee.

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this

section, a person described in RCW 11.96.070 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96.170.

Sec. 66. RCW 11.98.240 and 1993 c 339 s 6 are each amended to read as follows:

(1)(a)(i) RCW 11.98.200 and 11.98.210 respectively apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after July 25, 1993, unless the instrument's terms refer specifically to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary. However, except for RCW 11.98.200(3), the 1994 c . . . (this act) amendments to RCW 11.98.200 apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after the effective date of this section, unless the instrument's terms refer specifically to RCW 11.98.200 and provide expressly to the contrary.

(ii) Notwithstanding (a)(i) of this subsection, for the purposes of this subsection a codicil to a will or an amendment to a trust does not cause that instrument to be executed after ~~((the aforementioned date))~~ July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.98.200 or 11.98.210 apply.

(b) Notwithstanding (a) of this subsection, RCW 11.98.200 and 11.98.210 respectively apply to a trust established under a will or codicil of a decedent dying on or after July 25, 1993, and to an inter vivos trust to which the trustor had on or after July 25, 1993, the power to terminate, revoke, amend, or modify, unless:

(i) The terms of the instrument specifically refer to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary; or

(ii) The decedent or the trustor was not competent, on July 25, 1993, to change the disposition of his or her property, or to terminate, revoke, amend, or modify the trust, and did not regain his or her competence to dispose, terminate, revoke, amend, or modify before the date of the decedent's death or before the trust could not otherwise be revoked, terminated, amended, or modified by the decedent or trustor.

(2) RCW 11.98.200 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed under RCW 11.98.200 that was exercised before July 25, 1993. RCW 11.98.210 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed, limited, or qualified under RCW 11.98.210.

NEW SECTION. Sec. 67. A new section is added to chapter 11.94 RCW to read as follows:

(1) The restrictions in RCW 11.95.100 through 11.95.150 on the power of a person holding a power of appointment apply to attorneys-in-fact holding the power to appoint to or for the benefit of the powerholder.

(2) This section applies retroactively to July 25, 1993.

Sec. 68. RCW 11.100.035 and 1989 c 97 s 1 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.

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW 11.106.020, upon the request of that person. The restrictions set forth under RCW 11.100.090 may not be construed as prohibiting the fiduciary powers granted under this subsection.

Sec. 69. RCW 82.32.240 and 1988 c 64 s 21 are each amended to read as follows:

Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the

same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer who is, or decedent who was, engaging in business, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of revenue of such administration, receivership or assignment within sixty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: PROVIDED, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon to the extent of the value of the property subject to administration that otherwise would have been available for the payment of such taxes, increases, and penalties by the administrator, executor, guardian, receiver, or assignee.

As used in this section, "probate" includes the nonprobate claim settlement procedure under chapter 11.— RCW (sections 31 through 48 of this act), and "executor" and "administrator" includes any notice agent acting under chapter 11.— RCW (sections 31 through 48 of this act).

Sec. 70. RCW 83.100.020 and 1993 c 73 s 9 are each amended to read as follows:

As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal credit" means (a) for a transfer, the maximum amount of the credit for state taxes allowed by section 2011 of the Internal Revenue Code; and (b) for a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code;
- (4) "Federal return" means any tax return required by chapter 11 or 13 of the Internal Revenue Code;
- (5) "Federal tax" means (a) for a transfer, a tax under chapter 11 of the Internal Revenue Code; and (b) for a generation-skipping transfer, the tax under chapter 13 of the Internal Revenue Code;

(6) "Generation-skipping transfer" means a "generation-skipping transfer" as defined and used in section 2611 of the Internal Revenue Code;

(7) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(8) "Nonresident" means a decedent who was domiciled outside Washington at his death;

(9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(10) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code, such as the personal representative of an estate; or a transferor, trustee, or beneficiary of a generation-skipping transfer; or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the Internal Revenue Code;

(11) "Property" means (a) for a transfer, property included in the gross estate; and (b) for a generation-skipping transfer, all real and personal property subject to the federal tax;

(12) "Resident" means a decedent who was domiciled in Washington at time of death;

(13) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A(c) of the Internal Revenue Code;

(14) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code; and

(15) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the effective date of this section.

Sec. 71. RCW 83.110.010 and 1993 c 73 s 10 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) of the Internal Revenue Code, and interest and penalties imposed in addition to the excise tax;

(3) "Fiduciary" means executor, administrator of any description, and trustee;

(4) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the effective date of this section;

(5) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(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) 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;

(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

(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.

NEW SECTION. Sec. 72. The following acts or parts of acts are each repealed:

- (1) RCW 11.12.050 and 1965 c 145 s 11.12.050;
- (2) RCW 11.12.090 and 1965 c 145 s 11.12.090;
- (3) RCW 11.12.130 and 1965 c 145 s 11.12.130;
- (4) RCW 11.12.140 and 1965 c 145 s 11.12.140;
- (5) RCW 11.12.150 and 1965 c 145 s 11.12.150.
- (6) RCW 11.12.200 and 1965 c 145 s 11.12.200;
- (7) RCW 11.12.210 and 1965 c 145 s 11.12.210;
- (8) RCW 11.56.015 and 1965 c 145 s 11.56.015;
- (9) RCW 11.56.140 and 1965 c 145 s 11.56.140;
- (10) RCW 11.56.150 and 1965 c 145 s 11.56.150;
- (11) RCW 11.56.160 and 1965 c 145 s 11.56.160; and
- (12) RCW 11.56.170 and 1965 c 145 s 11.56.170.

NEW SECTION. Sec. 73. (1) Sections 4 through 8 of this act shall constitute a new chapter in Title 11 RCW.

(2) Section 19 of this act shall constitute a new chapter in Title 11 RCW.

(3) Sections 31 through 48 of this act shall constitute a new chapter in Title 11 RCW.

NEW SECTION. Sec. 74. The 1994 c . . . (this act) amendments to RCW 11.98.200(3) are remedial in nature and apply retroactively to July 25, 1993.

NEW SECTION. Sec. 75. (1) Except as provided in section 74 of this act, sections 1 through 72 of this act shall take effect January 1, 1995.

(2) Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 222

[Substitute House Bill 2274]

HIGH SCHOOL AND HIGHER EDUCATION CREDIT EQUIVALENCIES—TASK FORCE ON CURRICULUM ISSUES

AN ACT Relating to credit equivalencies for credits earned at institutions of higher education; adding new sections to chapter 28A.305 RCW; adding a new section to chapter 28B.80 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 28A.305 RCW to read as follows:

In exercising the state board of education's authority to establish high school credit equivalencies for credits earned at institutions of higher education, the state board of education has highlighted the need for an ongoing forum that encourages the various education entities to provide each other with advice and counsel as rules and policies are adopted that have implications for students in all sectors of the state's education system. The legislature appreciates the willingness of the state board of education to consider any recommendations from the task force created in section 2 of this act and to delay until September 1995, implementation of its rule establishing course equivalencies. Ultimately the issue of credit equivalencies must be decided within the broad context of education reform and the desire of the legislature to provide options for students to move through the system without meeting bureaucratic barriers to individual educational success.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.305 RCW to read as follows:

(1) By May 1, 1994, or as soon as possible thereafter, the higher education coordinating board and the state board of education shall convene a task force creating a forum for ongoing discussion of curriculum issues that transect higher education and the common schools. In selecting members of the task force, the boards shall consult the office of the superintendent of public instruction, the

commission on student learning, the state board for community and technical colleges, the work force training and education coordinating board, the Washington council on high school-college relations, representatives of the four-year institutions, representatives of the school directors, the school and district administrators, teachers, higher education faculty, students, counselors, vocational directors, parents, and other interested organizations. The process shall be designed to provide advice and counsel to the appropriate boards on topics that may include but are not limited to: (a) The changing nature of educational instruction and crediting, and awarding appropriate credit for knowledge and competencies learned in a variety of ways in both institutions of higher education and high schools; (b) options for students to enroll in programs and institutions that will best meet the students' needs and educational goals; and (c) articulation agreements between institutions of higher education and high schools.

(2) By December 30, 1994, after considering the advice of the task force created in this section, the higher education coordinating board and the state board of education shall report the recommendations on establishing credit equivalencies to the house of representatives and senate education and higher education committees.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.80 RCW to read as follows:

The higher education coordinating board shall work with the state board of education to establish the task force under section 2 of this act.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 6, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 223

[Substitute House Bill 2278]

LOCAL GOVERNMENT ELECTIONS

AN ACT Relating to local government election practices; amending RCW 42.12.010, 43.06.010, 14.08.304, 28A.315.520, 29.15.120, 29.15.200, 35.17.020, 35.17.400, 35.18.020, 35.18.270, 35.23.050, 35.23.240, 35.23.530, 35.24.050, 35.24.060, 35.24.100, 35.24.290, 35.27.100, 35.27.140, 35.61.050, 35A.01.070, 35A.02.050, 35A.02.130, 35A.06.020, 35A.06.030, 35A.06.050, 35A.12.010, 35A.12.040, 35A.12.050, 35A.12.060, 35A.12.180, 35A.13.010, 35A.13.020, 35A.14.060, 35A.14.070, 35A.15.040, 35A.16.030, 36.69.020, 36.69.070, 36.69.080, 36.69.090, 36.69.100, 36.69.440, 52.14.010, 52.14.013, 52.14.015, 52.14.030, 52.14.050, 52.14.060, 53.12.140, 54.08.060, 54.12.010, 54.40.010, 54.40.040, 54.40.050, 54.40.060, 54.40.070, 56.12.015, 56.12.020, 56.12.030, 57.02.050, 57.12.015, 57.12.020, 57.12.030, 57.12.039, 57.32.022, 57.32.023, 68.52.100, 68.52.140, 68.52.160, 68.52.220, 70.44.040, 70.44.045, 70.44.053, 53.12.010, 53.04.023, 53.12.115, 53.12.120, 53.12.130, 53.12.175, 53.16.015, and 29.45.050; amending 1992 c 146 s 14 (uncodified); reenacting and amending RCW 53.12.172; adding a new section to chapter 42.12 RCW; adding a new section to chapter 29.15 RCW; adding a new section to chapter 35.02 RCW; adding a new section to chapter

35A.29 RCW; adding a new section to chapter 56.12 RCW; adding a new section to chapter 68.52 RCW; adding a new section to chapter 53.12 RCW; adding a new section to chapter 53.04 RCW; repealing RCW 35.23.070, 35.24.070, 35.27.110, 35.61.060, 35.61.070, 35.61.080, 35A.02.001, 35A.02.100, 35A.02.110, 35A.14.060, 35A.15.030, 35A.16.020, 35A.29.010, 35A.29.020, 35A.29.030, 35A.29.040, 35A.29.050, 35A.29.060, 35A.29.070, 35A.29.080, 35A.29.090, 35A.29.100, 35A.29.105, 35A.29.110, 35A.29.140, 35A.29.150, 36.54.080, 36.54.090, 36.54.100, 36.69.060, 44.70.010, 53.12.047, 53.12.150, 57.02.060, 68.52.240, 70.44.051, 70.44.055, and 70.44.057; and providing effective dates.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 42.12 RCW to read as follows:

A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in RCW 29.15.190 and 29.21.410, each person who is appointed shall serve until a qualified person is elected at the next election at

which a member of the governing body normally would be elected that occurs twenty-eight or more days after the occurrence of the vacancy. If needed, special filing periods shall be authorized as provided in RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, a primary shall not be held and the person receiving the greatest number of votes shall be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.

If an election for the position that became vacant would otherwise have been held at this general election date, only one election to fill the position shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29.01.135 and shall service both the remainder of the unexpired term and the succeeding term.

Sec. 2. RCW 42.12.010 and 1993 c 317 s 9 are each amended to read as follows:

Every elective office shall become vacant on the happening of any of the following events:

- (1) The death of the incumbent;
- (2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;
- (3) His or her removal;
- (4) Except as provided in RCW 3.46.067 and 3.50.057, his or her ceasing to be a legally (~~qualified elector~~) registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;
- (5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;
- (6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;
- (7) The decision of a competent tribunal declaring void his or her election or appointment; or
- (8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.

Sec. 3. RCW 43.06.010 and 1993 c 142 s 5 are each amended to read as follows:

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

(1) The governor shall supervise the conduct of all executive and ministerial offices;

(2) The governor shall see that all offices are filled, including as provided in section 1 of this act, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

(3) The governor shall make the appointments and supply the vacancies mentioned in this title;

(4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of ~~((his))~~ the prosecutor's duties;

(8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;

(9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;

(10) The governor shall issue and transmit election proclamations as prescribed by law;

(11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;

(12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;

(13) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW 17.24.007 or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the

infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides;

(14) On all compacts forwarded to the governor pursuant to RCW 9.46.360(6), the governor is authorized and empowered to execute on behalf of the state compacts with federally recognized Indian tribes in the state of Washington pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III gaming, as defined in the Act, on Indian lands.

Sec. 4. RCW 14.08.304 and 1979 ex.s. c 126 s 3 are each amended to read as follows:

The board of airport district commissioners shall consist of three members(~~(who shall each be a registered voter and actually a resident of the district)~~). The first commissioners shall be appointed by the county legislative authority. At the next general district election, held as provided in RCW 29.13.020, three airport district commissioners shall be elected. The terms of office of airport district commissioners shall be two years, or until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170. Members of the board of airport district commissioners shall be elected at each regular district general election on a nonpartisan basis in accordance with the general election law. (~~(They shall be nominated by petition of ten registered voters of the district.)~~) Vacancies on the board of airport district commissioners shall occur and shall be filled (~~(by appointment by the remaining commissioners)~~) as provided in chapter 42.12 RCW. Members of the board of airport district commissioners shall receive no compensation for their services, but shall be reimbursed for actual necessary traveling and sustenance expenses incurred while engaged on official business.

Sec. 5. RCW 28A.315.520 and 1971 c 53 s 4 are each amended to read as follows:

A majority of all members of the board of directors shall constitute a quorum. Absence of any board member from four consecutive regular meetings of the board, unless on account of sickness or authorized by resolution of the board, shall be sufficient cause for the remaining members of the board to declare by resolution that such board member position is vacated. In addition, vacancies shall occur as provided in RCW 42.12.010.

Sec. 6. RCW 29.15.120 and 1990 c 59 s 86 are each amended to read as follows:

A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29.15.020 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. The filing officer may permit the withdrawal of a filing for the office of precinct committee

officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the general election ballots for that precinct have not been printed. The filing officer may permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots for that city, town, or special district have not been ordered. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files.

NEW SECTION. Sec. 7. A new section is added to chapter 29.15 RCW to read as follows:

Each person who files a declaration of candidacy for an elected office of a city, town, or special district shall be given written notice of the date by which a candidate may withdraw his or her candidacy under RCW 29.15.120.

Sec. 8. RCW 29.15.200 and 1975-'76 2nd ex.s. c 120 s 13 are each amended to read as follows:

If after both the normal filing period and special three day filing period as provided by RCW 29.15.170 and 29.15.180(~~(, as now or hereafter amended,)~~) have passed (~~(and still)~~), no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until (~~(his)~~) a successor is elected at the next election when such positions are voted upon (~~(as provided by RCW 29.21.410, as now or hereafter amended)~~).

NEW SECTION. Sec. 9. A new section is added to chapter 35.02 RCW to read as follows:

An election shall be held to elect city or town elected officials at the next municipal general election occurring more than twelve months after the date of the first election of councilmembers or commissioners. Candidates shall run for specific council or commission positions. The staggering of terms of members of the city or town council shall be established at this election, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office and the remainder of the persons elected as councilmembers shall be elected to two-year terms of office. Newly elected councilmembers or newly elected commissioners shall serve until their successors are elected and qualified. The terms of office of newly elected commissioners shall not be staggered, as provided in chapter 35.17 RCW. All councilmembers and commissioners who are elected subsequently shall be elected to four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Sec. 10. RCW 35.17.020 and 1979 ex.s. c 126 s 17 are each amended to read as follows:

All regular elections in cities organized under the statutory commission form of government shall be held quadrennially in the odd-numbered years on the dates provided in RCW 29.13.020. The commissioners shall be nominated and elected at large. Their terms shall be for four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. ~~((If a vacancy occurs in the commission the remaining members shall appoint a person to fill it for the unexpired term.))~~ Vacancies on a commission shall occur and shall be filled as provided in chapter 42.12 RCW, except that in every instance a person shall be elected to fill the remainder of the unexpired term at the next general municipal election that occurs twenty-eight or more days after the occurrence of the vacancy.

Sec. 11. RCW 35.17.400 and 1979 ex.s. c 126 s 18 are each amended to read as follows:

The first election of commissioners shall be held ~~((within))~~ at the next special election that occurs at least sixty days after the ~~((adoption of))~~ election results are certified where the proposition to organize under the commission form was approved by city voters, and the commission first elected shall commence to serve as soon as they have been elected and have qualified and shall continue to serve until their successors have been elected and qualified and have assumed office in accordance with RCW 29.04.170. The date of the second election for commissioners shall be in accordance with RCW 29.13.020 such that the term of the first commissioners will be as near as possible to, but not in excess of, four years calculated from the first day in January in the year after the year in which the first commissioners were elected.

Sec. 12. RCW 35.18.020 and 1981 c 260 s 7 are each amended to read as follows:

(1) The number of ~~((councilmen))~~ councilmembers in a city or town operating with a council-manager plan of government shall be ~~((in proportion to the population of the city or town indicated in its petition for incorporation and thereafter shall be in proportion to its population as last))~~ based upon the latest population of the city or town that is determined by the office of financial management as follows:

(a) A city or town having not more than two thousand inhabitants, five ~~((councilmen))~~ councilmembers; and

(b) A city or town having more than two thousand, seven ~~((councilmen))~~ councilmembers.

(2) ~~((All councilmen shall be elected at large or from such wards or districts as may be established by ordinance, and shall serve for a term of four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, HOWEVER, That at the first general municipal election held in the city in accordance with RCW 29.13.020, after the election approving the council manager plan, the following shall apply:~~

~~(a) One councilman shall be nominated and elected from each ward or such other existing district of said city as may have been established for the election of members of the legislative body of the city and the remaining councilmen shall be elected at large; but if there are no such wards or districts in the city, or at an initial election for the incorporation of a community, the councilmen shall be elected at large.~~

~~(b) In cities electing five councilmen, the candidates having the three highest number of votes shall be elected for a four year term and the other two for a two year term commencing immediately when qualified in accordance with RCW 29.01.135 and continuing until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170.~~

~~(c) In cities electing seven councilmen, the candidates having the four highest number of votes shall be elected for a four year term and the other three for a two year term commencing immediately when qualified in accordance with RCW 29.01.135 and continuing until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170.~~

~~(d) In determining the candidates receiving the highest number of votes, only the candidate receiving the highest number of votes in each ward, as well as the councilman at large or councilmen at large, are to be considered)) Except for the initial staggering of terms, councilmembers shall serve for four-year terms of office. All councilmembers shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. Councilmembers may be elected on a city-wide or town-wide basis, or from wards or districts, or any combination of these alternatives. Candidates shall run for specific positions. Wards or districts shall be redrawn as provided in chapter 29.70 RCW. Wards or districts shall be used as follows: (a) Only a resident of the ward or district may be a candidate for, or hold office as, a councilmember of the ward or district; and (b) only voters of the ward or district may vote at a primary to nominate candidates for a councilmember of the ward or district. Voters of the entire city or town may vote at the general election to elect a councilmember of a ward or district, unless the city or town had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward or district associated with the council positions. If a city or town had so limited the voting in the general election to only voters residing within the ward or district, then the city or town shall be authorized to continue to do so.~~

~~(3) When a ((municipality)) city or town has qualified for an increase in the number of ((councilmen)) councilmembers from five to seven by virtue of the next succeeding population determination made by the office of financial management ((after the majority of the voters thereof have approved operation under the council manager plan)), two additional council positions shall be filled at the ((first)) next municipal general election ((when two additional councilmen are to be elected, one of the two additional councilmen receiving)) with the person elected to one of the new council positions receiving the ((highest))~~

greatest number of votes ((shall be)) being elected for a four-year term of office and the person elected to the other additional ((councilman shall be)) council position being elected for a two-year term of office. The ((terms of the)) two additional ((councilmen)) councilmembers shall ((commence)) assume office immediately when qualified in accordance with RCW 29.01.135, but the term of office shall be computed from the first day of January after the year in which they are elected. Their successors shall be elected to four-year terms of office.

~~((4) In the event such population determination as provided in subsection (3) of this section requires an increase in the number of councilmen))~~ Prior to the election of the two new councilmembers, the city or town council shall fill the additional ((councilman)) positions by appointment not later than ((thirty)) forty-five days following the release of ((said)) the population determination, and ((the)) each appointee shall hold office only until ((the next regular city or town election at which a person shall be elected to serve for the remainder of the unexpired term. In the event such population determination results in a decrease in the number of councilmen, said decrease shall not take effect until the next regular city or town election: PROVIDED, That)) the new position is filled by election.

(4) When a city or town has qualified for a decrease in the number of councilmembers from seven to five by virtue of the next succeeding population determination made by the office of financial management, two council positions shall be eliminated at the next municipal general election if four council positions normally would be filled at that election, or one council position shall be eliminated at each of the next two succeeding municipal general elections if three council positions normally would be filled at the first municipal general election after the population determination. The council shall by ordinance indicate which, if any, of the remaining positions shall be elected at-large or from wards or districts.

~~((5) ((If a vacancy in the council occurs, the remaining members shall appoint a person to fill such office only until the next regular general municipal election at which a person shall be elected to serve for the remainder of the unexpired term)) Vacancies on a council shall occur and shall be filled as provided in chapter 42.12 RCW.~~

Sec. 13. RCW 35.18.270 and 1979 ex.s. c 126 s 20 are each amended to read as follows:

If the majority of the votes cast at a special election for organization on the council-manager plan favor the plan, the city or town ~~((at its next regular election))~~ shall elect the council required under the council-manager plan in number according to ~~((the))~~ its population ~~((of the municipality: PROVIDED, That if the date of the next municipal general election is more than one year from the date of the election approving the council manager plan, a special election shall be held to elect the councilmen; the newly elected councilmen shall assume office immediately when they are qualified in accordance with RCW 29.01.135 following the canvass of votes as certified and shall remain in office~~

~~until their successors are elected at the next general municipal election: PROVIDED, That such successor shall hold office for staggered terms as provided in RCW 35.18.020 as now or hereafter amended. Councilmen shall take office at the time provided by general law. Declarations of candidacy for city or town elective positions under the council manager plan for cities and towns shall be filed with the county auditor as the case may be not more than forty five nor less than thirty days prior to said special election to elect the members of the city council. Any candidate may file a written declaration of withdrawal at any time within five days after the last day for filing a declaration of candidacy. All names of candidates to be voted upon shall be printed upon the ballot alphabetically in group under the designation of the title of the offices for which they are candidates. There shall be no rotation of names)) at the next municipal general election. However, special elections shall be held to nominate and elect the new city councilmembers at the next primary and general election held in an even-numbered year if the next municipal general election is more than one year after the date of the election at which the voters approved the council-manager plan. The staggering of terms of office shall occur at the election when the new councilmembers are elected, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year, and the remainder of the persons elected as councilmembers shall be elected to two-year terms of office if the election is held in an odd-numbered year, or one-year terms of office if the election is held in an even-numbered year. The initial councilmembers shall take office immediately when they are elected and qualified, but the lengths of their terms of office shall be calculated from the first day in January in the year following the election.~~

**Sec. 14. RCW 35.23.050 and 1965 c 7 s 35.23.050 are each amended to read as follows:*

All municipal elections held under the provisions of this chapter shall be conducted according to the general election laws of this state(~~(, as far as practicable. PROVIDED, That any qualified voter of such city, duly registered for the general county or state election next preceding any municipal election, general or special, shall be qualified to vote at such municipal election. No person shall be qualified to vote at such election unless he is a qualified elector of the county and has resided in such city for at least thirty days next preceding such election))~~).

**Sec. 14 was vetoed, see message at end of chapter.*

**Sec. 15. RCW 35.23.240 and 1965 c 7 s 35.23.240 are each amended to read as follows:*

The city council may declare an office vacant: (1) If anyone either elected or appointed to that office fails for ten days to qualify as required by law or fails to enter upon ((his)) the duties of that office at the time fixed by law or

the orders of the city council, ~~((his))~~ the office shall become vacant; or (2) if such an officer ~~((absents himself))~~ who serves for compensation is absent from the city without the consent of the city council for three consecutive weeks or openly neglects or refuses to discharge ~~((his))~~ the duties~~((the council may declare his office vacant. PROVIDED, That this penalty for absence from the city shall not apply to such officers as serve without compensation.~~

~~If a vacancy occurs by reason of death, resignation, or otherwise in the office of mayor or councilman, the city council shall fill the vacancy until the next general municipal election))~~ of that office. In addition, a vacancy in an elective office shall occur and shall be filled as provided in chapter 42.12 RCW.

If a vacancy occurs ~~((by reason of death, resignation, or otherwise))~~ in any other office it shall be filled by appointment of the mayor and confirmed by the council in the same manner as other appointments are made.

*Sec. 15 was vetoed, see message at end of chapter.

Sec. 16. RCW 35.23.530 and 1965 c 7 s 35.23.530 are each amended to read as follows:

At any time not within three months previous to an annual election the city council of a second class city may divide the city into wards, not exceeding six in all, or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any ~~((councilman, but he))~~ councilmember, and councilmembers shall serve out ~~((his))~~ their terms in the wards of ~~((his))~~ their residences at the time of ~~((his election. PROVIDED, That if this results))~~ their elections. However, if these boundary changes result in one ward being represented by more ~~((councilmen))~~ councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant.

The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

~~((No person shall be eligible to the office of councilman unless he resides in the ward for which he is elected on the date of his election and removal of his residence from the ward for which he was elected renders his office vacant.))~~

Wards shall be redrawn as provided in chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the

remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist.

Sec. 17. RCW 35.24.050 and 1979 ex.s. c 126 s 22 are each amended to read as follows:

General municipal elections in third class cities not operating under the commission form of government shall be held biennially in the odd-numbered years ~~((as provided in RCW 29.13.020))~~ and shall be subject to general election law.

The terms of office of the mayor, city attorney, clerk, and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, That if the offices of city attorney, clerk, and treasurer are made appointive, the city attorney, clerk, and treasurer shall not be appointed for a definite term: PROVIDED FURTHER, That the term of the elected treasurer shall not commence in the same biennium in which the term of the mayor commences, nor in which the terms of the city attorney and clerk commence if they are elected.

~~((A councilman at large shall be elected biennially for a two-year term and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. Of the other six councilmen, three shall be elected in each biennial general municipal election for terms of four years and until their successors are elected and qualified and assume))~~ Council positions shall be numbered in each third class city so that council position seven has a two-year term of office and council positions one through six shall each have four-year terms of office. Each councilmember shall remain in office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

In its discretion the council of a third class city may divide the city by ordinance into a convenient number of wards, not exceeding six, fix the boundaries of the wards, and change the ward boundaries from time to time and as provided in RCW 29.70.100. No change in the boundaries of any ward shall be made within one hundred twenty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. However, if a boundary change results in one ward being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant. Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmembers to be elected from each ward, apportioning the same in proportion to the population of the wards. Council position seven shall not be associated with a ward and the person elected to that position may reside anywhere in the city and voters throughout the city may vote at a primary to nominate candidates for position seven, when a primary is necessary, and at a

general election to elect the person to council position seven. When additional territory is added to the city it may by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. Wards shall be redrawn as provided in chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist.

**Sec. 18. RCW 35.24.060 and 1965 c 7 s 35.24.060 are each amended to read as follows:*

All elections shall be held in accordance with the general election laws of the state ~~((insofar as the same are applicable and no person shall be entitled to vote at any election unless he shall be a qualified elector of the county and shall have resided in such city for at least thirty days next preceding such election))~~.

**Sec. 18 was vetoed, see message at end of chapter.*

Sec. 19. RCW 35.24.100 and 1965 c 7 s 35.24.100 are each amended to read as follows:

~~((In cities of))~~ The council of a third class city may declare a council position vacant if ~~((a member of the city council absents himself))~~ that councilmember is absent for three consecutive regular meetings ~~((thereof, unless by))~~ without the permission of the council~~((, his office may be declared vacant by the council.~~

~~Vacancies in the city council or in the office of mayor shall be filled by majority vote of the council).~~ In addition, a vacancy in an elective office shall occur and shall be filled as provided in chapter 42.12 RCW.

Vacancies in offices other than that of mayor or city ~~((councilman))~~ councilmember shall be filled by appointment of the mayor.

~~((If a vacancy occurs in an elective office the appointee shall hold office only until the next regular election at which a person shall be elected to serve for the remainder of the unexpired term.))~~

If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed.

**Sec. 20. RCW 35.24.290 and 1993 c 83 s 6 are each amended to read as follows:*

The city council of each third class city shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state or of the United States;

(2) To prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof and to cause the impounding and sale of any such animals;

(3) To establish, build and repair bridges, to establish, lay out, alter, keep open, open, widen, vacate, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain; sprinkle and light the same; to remove all obstructions therefrom; to establish and reestablish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part; to construct gutters, culverts, sidewalks and crosswalks therein or upon any part thereof; to cultivate and maintain parking strips therein, and generally to manage and control all such highways and places; to provide by local assessment for the leveling up and surfacing and oiling or otherwise treating for the laying of dust, all streets within the city limits;

(4) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets and alleys or within two hundred feet thereof along which sewers shall have been constructed to make proper connections therewith and to use the same for proper purposes, and in case the owners of the property on such streets and alleys or within two hundred feet thereof fail to make such connections within the time fixed by such council, it may cause such connections to be made and assess against the property served thereby the costs and expenses thereof;

(5) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(6) To impose and collect an annual license on every dog within the limits of the city, to prohibit dogs running at large and to provide for the killing of all dogs not duly licensed found at large;

(7) To license, for the purposes of regulation and revenue, all and every kind of business authorized by law, and transacted and carried on in such city, and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof, to fix the rate of license tax upon the same, and to provide for the collection of the same by suit or otherwise;

(8) To improve rivers and streams flowing through such city, or adjoining the same; to widen, straighten and deepen the channel thereof, and remove obstructions therefrom; to improve the water-front of the city, and to construct and maintain embankments and other works to protect such city from overflow; to prevent the filling of the water of any bay, except such filling over tide or shorelands as may be provided for by order of the city council; to purify and prevent the pollution of streams of water, lakes or other sources of supply,

and for this purpose shall have jurisdiction over all streams, lakes or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof;

(9) To erect and maintain buildings for municipal purposes;

(10) To permit, under such restrictions as it may deem proper, and to grant franchises for, the laying of railroad tracks, and the running of cars propelled by electric, steam or other power thereon, and the laying of gas and water pipes and steam mains and conduits for underground wires, and to permit the construction of tunnels or subways in the public streets, and to construct and maintain and to permit the construction and maintenance of telegraph, telephone and electric lines therein;

~~(11) ((In its discretion to divide the city by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: PROVIDED, That no change in the boundaries of any ward shall be made within sixty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward, or by general vote of the whole city as may be designated in such ordinance. When additional territory is added to the city it may by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. The removal of a councilman from the ward for which he was elected shall create a vacancy in such office;~~

~~(12))~~ To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed five thousand dollars nor the term of such imprisonment exceed the term of one year, except that the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime; or to provide that violations of ordinances constitute a civil violation subject to monetary penalty, but no act that is a state crime may be made a civil violation;

~~((13))~~ (12) To establish fire limits, with proper regulations;

~~((14))~~ (13) To establish and maintain a free public library;

~~((15))~~ (14) To establish and regulate public markets and market places;

~~((16))~~ (15) To punish the keepers and inmates and lessors of houses of ill fame, gamblers and keepers of gambling tables, patrons thereof or those found loitering about such houses and places;

~~((17))~~ (16) To make all such ordinances, bylaws, rules, regulations and resolutions, not inconsistent with the Constitution and laws of the state of

Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to enact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws;

~~((18))~~ (17) *To license steamers, boats and vessels used in any bay or other watercourse in the city and to fix and collect such license; to provide for the regulation of berths, landings, and stations, and for the removing of steamboats, sail boats, sail vessels, rafts, barges and other watercraft; to provide for the removal of obstructions to navigation and of structures dangerous to navigation or to other property, in or adjoining the waterfront, except in municipalities in counties in which there is a city of the first class.*

*Sec. 20 was vetoed, see message at end of chapter.

Sec. 21. RCW 35.27.100 and 1965 c 7 s 35.27.100 are each amended to read as follows:

All elections in towns shall be held in accordance with the general election laws of the state ~~((, so far as the same may be applicable, and no person shall be entitled to vote at such election, unless he is a qualified elector of the county, and has resided in the town for at least thirty days next preceding the election))~~.

Sec. 22. RCW 35.27.140 and 1965 c 7 s 35.27.140 are each amended to read as follows:

~~((If a member of))~~ The council of a town may declare a council position vacant if that councilmember is absent from the town for three consecutive council meetings ~~((unless by))~~ without the permission of the council ~~((his office shall be declared vacant by the council. A vacancy in the office of mayor and vacancies in the council shall be filled by a majority vote of the council))~~. In addition, a vacancy in an elective office shall occur and shall be filled as provided in chapter 42.12 RCW.

A vacancy in any other office shall be filled by appointment by the mayor. ~~((An appointee filling the vacancy in an elective office shall hold office only until the next general election at which time a person shall be elected to serve for the remainder of the unexpired term except that the person appointed to fill a vacancy in the office of mayor shall serve for the unexpired term.))~~

Sec. 23. RCW 35.61.050 and 1979 ex.s. c 126 s 24 are each amended to read as follows:

At the same election at which the proposition is submitted to the voters as to whether a metropolitan park district is to be formed, five park commissioners shall be elected ~~((to hold office respectively for the following terms: Where the election is held in an odd-numbered year, one commissioner shall be elected to hold office for two years, two shall be elected to hold office for four years, and two shall be elected to hold office for six years. Where the election is held in an even-numbered year, one commissioner shall hold office for three years, two~~

~~shall hold office for five years, and two shall hold office for seven years)).~~ The election of park commissioners shall be null and void if the metropolitan park district is not created. Candidates shall run for specific commission positions. No primary shall be held to nominate candidates. The person receiving the greatest number of votes for each position shall be elected as a commissioner. The staggering of the terms of office shall occur as follows: (1) The two persons who are elected receiving the two greatest numbers of votes shall be elected to six-year terms of office if the election is held in an odd-numbered year or five-year terms of office if the election is held in an even-numbered year; (2) the two persons who are elected receiving the next two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January ~~((of))~~ in the year after they are elected. ~~((The term of each nominee for park commissioner shall be expressed on the ballot.))~~ Thereafter, all commissioners shall ~~((serve))~~ be elected to six-year terms of office ((and)). All commissioners shall serve until their respective successors are elected and qualified and assume office in accordance with RCW 29.04.170. Vacancies shall occur and shall be filled ~~((by majority action of the remaining commissioners appointing a voter to fill the remainder of the term of the vacant commissioner position))~~ as provided in chapter 42.12 RCW.

Sec. 24. RCW 35A.01.070 and 1979 ex.s. c 18 s 1 are each amended to read as follows:

Where used in this title with reference to procedures established by this title in regard to a change of plan or classification of government, unless a different meaning is plainly required by the context:

(1) "Classify" means a change from a city of the first, second, or third class, or a town, to a code city.

(2) "Classification" means either that portion of the general law under which a city or a town operates under Title 35 RCW as a first, second, or third class city, unclassified city, or town, or otherwise as a code city.

(3) "Organize" means to provide for officers after becoming a code city, under the same general plan of government under which the city operated prior to becoming a code city, pursuant to RCW 35A.02.055.

(4) "Organization" means the general plan of government under which a city operates.

(5) "Plan of government" means ~~((either the))~~ a mayor-council form of government under chapter 35A.12 RCW, council-manager form of government under chapter 35A.13 RCW, or a mayor-council, council-manager, or commission form of government in general that is retained by a noncharter code city as

provided in RCW 35A.02.130, without regard to variations in the number of elective offices or whether officers are elective or appointive.

(6) "Reclassify" means changing from a code city to the classification, if any, held by such a city immediately prior to becoming a code city.

(7) "Reclassification" means changing from city or town operating under Title 35 RCW to a city operating under Title 35A RCW, or vice versa; a change in classification.

(8) "Reorganize" means changing the plan of government under which a city or town operates to a different general plan of government, for which an election of new officers under RCW 35A.02.050 is required. A city or town shall not be deemed to have reorganized simply by increasing or decreasing the number of members of its legislative body.

(9) "Reorganization" means a change in general plan of government where an election of all new officers is required in order to accomplish this change, but an increase or decrease in the number of members of its legislative body shall not be deemed to constitute a reorganization.

Sec. 25. RCW 35A.02.050 and 1979 ex.s. c 18 s 7 are each amended to read as follows:

The first election of officers where required for reorganization under a different general plan of government newly adopted in a manner provided in RCW 35A.02.020, 35A.02.030, 35A.06.030, or 35A.06.060, as now or hereafter amended, shall be at the next general municipal election if one is to be held more than ninety days but not more than one hundred and eighty days after certification of a reorganization ordinance or resolution, or otherwise at a special election to be held for that purpose in accordance with RCW 29.13.020. In the event that the first election of officers (~~as herein provided~~) is to be held at a general municipal election, such election shall be preceded by a primary election pursuant to RCW 29.21.010 and 29.13.070. In the event that the first election of all officers (~~as herein provided~~) is to be held at a special election rather than at a general election, and notwithstanding any provisions of any other law to the contrary, such special election shall be preceded by a primary election to be held on a date authorized by RCW 29.13.010, and the persons nominated at that primary election shall be voted upon at the next succeeding special election that is authorized by RCW 29.13.010: PROVIDED, That in the event the ordinances calling for reclassification or reclassification and reorganization under the provisions of Title 35A RCW have been filed with the secretary of state pursuant to RCW 35A.02.040 in an even-numbered year at least ninety days prior to a state general election then the election of new officers shall be concurrent with the state primary and general election and shall be conducted as set forth in (~~chapter 35A.29 RCW~~) general election law.

Upon reorganization, candidates for all offices shall file or be nominated for and successful candidates shall be elected to specific council positions(~~and as~~). The initial terms (~~of~~) of office for those elected at a first election of all officers (~~to positions one and two for a five member council, or positions one~~

~~through three for a seven member council, shall if the election occurs at a general municipal election be only until the second Monday in January first following the next general municipal election two years hence and if the election occurs at a special election, the duration of these initial terms shall be until the second Monday in January in the first even numbered year that follows the next general municipal election. The duration of the initial term attaching to the remaining councilmanic positions shall be until the second Monday in January two years next thereafter, so that staggered regular four year terms will ultimately result. Any declarations of candidacy for any primary or other election held pursuant to this section shall be filed as provided in RCW 35A.29.110 as now or hereafter amended)) shall be as follows: (1) A simple majority of the persons who are elected as councilmembers receiving the greatest numbers of votes and the mayor in a city with a mayor-council plan of government shall be elected to four-year terms of office, if the election is held in an odd-numbered year, or three-year terms of office, if the election is held in an even-numbered year; and (2) the other persons who are elected as councilmembers shall be elected to two-year terms of office, if the election is held in an odd-numbered year, or one-year terms of office, if the election is held in an even-numbered year. The newly elected officials shall take office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day of January in the year following the election. Thereafter, each person elected as a councilmember or mayor in a city with a mayor-council plan of government shall be elected to a four-year term of office. Each councilmember and mayor in a city with a mayor-council plan of government shall serve until a successor is elected and qualified and assumes office as provided in RCW 29.04.170.~~

The former officers shall, upon the election and qualification of new officers, deliver to the proper officers of the reorganized noncharter code city all books of record, documents and papers in their possession belonging to such municipal corporation before the reorganization thereof. ~~((Officers elected at the first election of officers held pursuant to this amendatory act shall assume office as soon as the election returns have been certified.))~~

Sec. 26. RCW 35A.02.130 and 1967 ex.s. c 119 s 35A.02.130 are each amended to read as follows:

Any incorporated city or town governed under a plan of government authorized prior to the time this title takes effect may become a noncharter code city without changing such plan of government by the use of the petition-for-election or resolution-for-election procedures provided in RCW 35A.02.060 and 35A.02.070 to submit to the voters a proposal that such municipality adopt the classification of noncharter code city while retaining its existing plan of government, and upon a favorable vote on the proposal, such municipality shall be classified as a noncharter code city and retain its old plan of government, such reclassification to be effective upon the filing of the record of such election with the office of the secretary of state. Insofar as the provisions of RCW

35A.02.100 and 35A.02.110 are applicable to an election on such a reclassification proposal they shall apply to such election.

Sec. 27. RCW 35A.06.020 and 1967 ex.s. c 119 s 35A.06.020 are each amended to read as follows:

The classifications of municipalities which existed prior to the time this title goes into effect—first class city, second class city, third class ((and fourth class)) city, town, and unclassified city—and the restrictions, limitations, duties, and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to noncharter code cities, but every noncharter code city, by adopting such classification, has elected to be governed by the provisions of this title, with the powers granted hereby. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city changes its plan of government to the provisions of either chapter 35A.12 or 35A.13 RCW.

Sec. 28. RCW 35A.06.030 and 1979 ex.s. c 18 s 14 are each amended to read as follows:

By use of the resolution for election or petition for election methods described in RCW 35A.06.040, any noncharter code city which has operated for more than six consecutive years under one of the optional plans of government authorized by this title, or for more than a combined total of six consecutive years under a particular plan of government both as a code city and under the same general plan under Title 35 RCW immediately prior to becoming a code city, may abandon such organization and may reorganize and adopt another plan of government authorized for noncharter code cities, but only after having been a noncharter code city for more than one year or a city after operating for more than six consecutive years under a particular plan of government as a noncharter code city ~~((or may reclassify and adopt a plan of government authorized by the general law for municipalities of the highest class for which the population of such city qualifies it, or authorized for the class to which such city belonged immediately prior to becoming a noncharter code city, if any))~~: PROVIDED, That these limitations shall not apply to a city seeking to adopt a charter.

In reorganization under a different general plan of government as a noncharter code city, officers shall all be elected as provided in RCW 35A.02.050. When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city ceases to be governed under this optional municipal code and shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law.

Sec. 29. RCW 35A.06.050 and 1979 ex.s. c 18 s 15 are each amended to read as follows:

The proposal for abandonment of a plan of government as authorized in RCW 35A.06.030 and for adoption of the plan named in the resolution or petition shall be voted upon at the next general municipal election if one is to be

held within one hundred and eighty days or otherwise at a special election called for that purpose in accordance with RCW 29.13.020. The ballot title and statement of the proposition shall be prepared by the city attorney as provided in RCW 29.27.060 and 35A.29.120(~~(, as now or hereafter amended. If the plan proposed in the petition is not a plan authorized for noncharter code cities by this title, the ballot statement shall clearly set forth that adoption of such plan by the voters would require abandonment of the classification of noncharter code city and that government would be under the general law relating to cities of the class specified in the resolution or petition. If the plan proposed in the petition is a plan authorized for noncharter code cities the ballot statement shall clearly set forth that adoption of such plan by the voters would not affect the eligibility of the noncharter code city to be governed under this optional municipal code)).~~

Sec. 30. RCW 35A.12.010 and 1985 c 106 s 1 are each amended to read as follows:

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a mayor-council code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of ~~((councilmen))~~ councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of

councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

Sec. 31. RCW 35A.12.040 and 1979 ex.s. c 18 s 21 are each amended to read as follows:

Officers shall be elected at biennial municipal elections to be conducted as provided in chapter 35A.29 RCW. The mayor and the ~~((councilmen))~~ councilmembers shall be elected for four-year terms of office and until their successors are elected and qualified ~~((; except that at any first election three councilmen in cities having seven councilmen, and two councilmen in cities having five councilmen, shall be elected for two year terms and the remaining councilmen shall be elected for four year terms))~~ and assume office in accordance with RCW 29.04.170. At any first election upon reorganization, councilmembers shall be elected as provided in RCW 35A.02.050. Thereafter the requisite number of ~~((councilmen))~~ councilmembers shall be elected biennially as the terms of their predecessors expire and shall serve for terms of four years. The positions to be filled on the city council shall be designated by consecutive numbers and shall be dealt with as separate offices for all election purposes ~~((; as provided in RCW 35A.29.105. In any city which holds its first election under this title in the calendar year 1970, candidates elected for two year terms shall hold office until their successors are elected and qualified at the general municipal election to be held in November, 1973 and candidates elected for four year terms shall hold office until their successors are elected and qualified at the general municipal election to be held in November, 1975)).~~ Election to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards. ~~((The city council shall be the judge of the qualifications of its members and determine contested elections of city officers, subject to review by certiorari as provided by law.))~~ The mayor and ~~((councilmen))~~ councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance.

Sec. 32. RCW 35A.12.050 and 1967 ex.s. c 119 s 35A.12.050 are each amended to read as follows:

The office of a mayor or ~~((councilman))~~ councilmember shall become vacant if ~~((he))~~ the person who is elected or appointed to that position fails to qualify as provided by law ~~((or))~~, fails to enter upon ~~((his))~~ the duties of that office at the time fixed by law without a justifiable reason, ~~((upon his death, resignation, removal from office by recall as provided by law, or when his office is~~

forfeited)) or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of mayor or in the council shall be filled ~~((for the remainder of the unexpired term, if any, at the next regular municipal election but the council, or the remaining members thereof, by majority vote shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If at any time the membership of the council is reduced below the number required for a quorum, the remaining members, nevertheless, by majority action may appoint additional members to fill the vacancies until persons are elected to serve the remainder of the unexpired terms. If, after thirty days have passed since the occurrence of a vacancy, the council are unable to agree upon a person to be appointed to fill a vacancy in the council, the mayor may make the appointment from among the persons nominated by members of the council))~~ as provided in chapter 42.12 RCW.

Sec. 33. RCW 35A.12.060 and 1967 ex.s. c 119 s 35A.12.060 are each amended to read as follows:

~~((A mayor or councilman shall forfeit his office, creating a vacancy, if he ceases to have the qualifications prescribed for such office by law, charter, or ordinance, or if he is convicted of a crime involving moral turpitude or an offense involving a violation of his oath of office. A councilman also shall forfeit his office if he))~~ In addition a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.

Sec. 34. RCW 35A.12.180 and 1967 ex.s. c 119 s 35A.12.180 are each amended to read as follows:

At any time not within three months previous to a municipal general election the council of a noncharter code city organized under this chapter may divide the city into wards or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any ~~((councilman, but he))~~ councilmember, and councilmembers shall serve out ((his)) their terms in the wards of ((his)) their residences at the time of ((his)) their elections; PROVIDED, That if this results in one ward being represented by more ((councilmen)) councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of those positions being vacant. The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable. ~~((When the city has been divided into wards no person shall be eligible to the office of councilman unless he resides in the ward for which he is elected on the date of his election, and removal of his residence from the ward for which he was elected renders his office vacant.))~~

Wards shall be redrawn as provided in chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold

office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so.

Sec. 35. RCW 35A.13.010 and 1987 c 3 s 16 are each amended to read as follows:

The ~~((councilmen))~~ councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a council-manager code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of ~~((councilmen))~~ councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number

of councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

Sec. 36. RCW 35A.13.020 and 1975 1st ex.s. c 155 s 1 are each amended to read as follows:

In council-manager code cities, eligibility for election to the council, the manner of electing councilmen, the numbering of council positions, the terms of councilmen, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a mayor pro tempore or deputy mayor or councilman pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060, and 35A.12.065 relating to the council of a code city organized under the mayor-council plan(~~(+ PROVIDED, That)~~), except that in council-manager cities where all council positions are at-large positions, the city council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one (~~on or after September 8, 1975,~~) shall be the council chairman and shall carry out the duties prescribed by RCW 35A.13.030(~~(, as now or hereafter amended)~~).

***Sec. 37.** RCW 35A.14.060 and 1967 ex.s. c 119 s 35A.14.060 are each amended to read as follows:

An annexation election shall be held in accordance with (~~chapter 35A.29 RCW of this title~~) general election law and only registered voters who have resided in the area proposed to be annexed for ninety days immediately preceding the election shall be allowed to vote therein.

*Sec. 37 was vetoed, see message at end of chapter.

Sec. 38. RCW 35A.14.070 and 1979 ex.s. c 124 s 4 are each amended to read as follows:

Notice of an annexation election shall particularly describe the boundaries of the area proposed to be annexed, as the same may have been modified by the boundary review board or the county annexation review board, state the objects of the election as prayed in the petition or as stated in the resolution, and require the voters to cast ballots which shall contain the words "For Annexation" or "Against Annexation" or words equivalent thereto, or contain the words "For Annexation and Adoption of Proposed Zoning Regulation", and "Against Annexation and Adoption of Proposed Zoning Regulation", or words equivalent thereto in case the simultaneous adoption of a proposed zoning regulation is proposed, and in case the assumption of all or a portion of indebtedness is proposed, shall contain an appropriate, separate proposition for or against the

portion of indebtedness that the city requires to be assumed. The notice shall be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed and published at least once a week for two weeks prior to the date of election in a newspaper of general circulation within the limits of the territory proposed to be annexed. Such notice shall be in addition to the notice required by ~~((RCW 35A.29.140))~~ general election law.

Sec. 39. RCW 35A.15.040 and 1967 ex.s. c 119 s 35A.15.040 are each amended to read as follows:

~~((The election shall be conducted and the returns canvassed as provided in chapter 35A.29 RCW.))~~ Ballot titles shall be prepared by the city as provided in RCW 35A.29.120 and shall contain the words "For Dissolution" and "Against Dissolution", and shall contain on separate lines, alphabetically, the names of candidates for receiver. If a majority of the votes cast on the proposition are for dissolution, the municipal corporation shall be dissolved upon certification of the election results to the office of the secretary of state.

Sec. 40. RCW 35A.16.030 and 1967 ex.s. c 119 s 35A.16.030 are each amended to read as follows:

~~((The election returns shall be canvassed as provided in RCW 35A.29.070 and))~~ If three-fifths of the votes cast on the proposition favor the reduction of the corporate limits, the ~~((legislative body, by an order entered on its minutes, shall direct the clerk to))~~ county auditor shall make and transmit to the office of the secretary of state a certified abstract of the vote.

NEW SECTION. **Sec. 41.** A new section is added to chapter 35A.29 RCW to read as follows:

Elections for code cities shall comply with general election law.

Sec. 42. RCW 36.69.020 and 1969 c 26 s 2 are each amended to read as follows:

The formation of a park and recreation district shall be initiated by a petition designating the boundaries thereof by metes and bounds, or by describing the land to be included therein by townships, ranges and legal subdivisions. Such petition shall set forth the object of the district and state that it will be conducive to the public welfare and convenience, and that it will be a benefit to the area therein. Such petition shall be signed by not less than fifteen percent of the registered voters residing within the area so described. ~~((No person signing the petition may withdraw his name therefrom after filing.))~~ The name of a person who has signed the petition may not be withdrawn from the petition after the petition has been filed.

The petition shall be filed with the auditor of the county within which 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 provided for in RCW 36.69.040. The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency thereof ~~((and for that purpose shall have access to all registration~~

~~books or records in the possession of the registration officers of the election precincts included, in whole or in part, within the proposed district. Such books and records shall be prima facie evidence of the truth of the certificate).~~

If the petition is found to contain a sufficient number of signatures of qualified persons, the auditor shall transmit it, together with ~~((his))~~ a certificate of sufficiency attached thereto, to the county ~~((commissioners who))~~ legislative authority, which shall by resolution entered upon ~~((their))~~ its minutes ~~((;))~~ receive it and fix a day and hour when ~~((they))~~ the legislative authority will publicly hear the petition, as provided in RCW 36.69.040.

Sec. 43. RCW 36.69.070 and 1979 ex.s. c 126 s 28 are each amended to read as follows:

~~((All elections pursuant to this chapter shall be conducted in accordance with the provisions of chapter 29.13 RCW for district elections.))~~ A ballot proposition authorizing the formation of the proposed park and recreation district shall be submitted to the voters of the proposed district for their approval or rejection at the next general state election occurring sixty or more days after the county legislative authority fixes the boundaries of the proposed district. Notices of the election for the formation of the park and recreation district shall state generally and briefly the purpose thereof and shall give the boundaries of the proposed district ~~((; define the election precincts, designate the polling place of each, give the names of the five nominated park and recreation commissioner candidates of the proposed district,))~~ and name the day of the election and the hours during which the polls will be open. The proposition to be submitted to the voters shall be stated in such manner that the voters may indicate yes or no upon the proposition of forming the proposed park and recreation district. ~~((The ballot shall be so arranged that voters may vote for the five nominated candidates or may write in the names of other candidates.))~~

The initial park and recreation commissioners shall be elected at the same election, but this election shall be null and void if the district is not authorized to be formed. No primary shall be held to nominate candidates for the initial commissioner positions. Candidates shall run for specific commission positions. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person who receives the greatest number of votes for each commission position shall be elected to that position. The three persons who are elected receiving the greatest number of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year. The other two persons who are elected shall be elected to two-year terms of office if the election is held in an odd-numbered year or one-year terms of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately upon being elected and qualified, but the length of such terms shall be computed from the first day of January in the year following this election.

Sec. 44. RCW 36.69.080 and 1979 ex.s. c 126 s 29 are each amended to read as follows:

If a majority of all votes cast upon the proposition favors the formation of the district, ~~((the))~~ the county legislative authority shall~~((t))~~, by resolution, declare the territory organized as a park and recreation district under the designated name ~~((theretofore designated, and shall declare the candidate from each subdivision receiving the highest number of votes for park and recreation commissioner the duly elected first park and recreation commissioner of the subdivision of the district. These initial park and recreation commissioners shall take office immediately upon their election and qualification and hold office until their successors are elected and qualified and assume office as provided in RCW 36.69.090 as now or hereafter amended)).~~

Sec. 45. RCW 36.69.090 and 1987 c 53 s 1 are each amended to read as follows:

A park and recreation district shall be governed by a board of five commissioners. Except for the initial commissioners, all commissioners shall be elected to staggered four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. Candidates shall run for specific commissioner positions.

Elections for park and recreation district commissioners shall be held biennially in conjunction with the general election in each odd-numbered year. ~~((Residence anywhere within the district shall qualify an elector for any position on the commission after the initial election.))~~ Elections shall be held in accordance with the provisions of Title 29 RCW dealing with general elections. ~~((All commissioners shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. At the first election following the formation of the district, the two candidates receiving the highest number of votes shall serve for terms of four years, and the three candidates receiving the next highest number of votes shall serve for two years. Thereafter all commissioners shall be elected for four year terms: PROVIDED, That if there would otherwise be two commissioners elected at the November 1987 general election, the candidate receiving the highest number of votes shall serve a four year term, and the commissioner receiving the second highest number of votes shall serve a two year term.))~~

Sec. 46. RCW 36.69.100 and 1963 c 4 s 36.69.100 are each amended to read as follows:

Vacancies on the board of park and recreation commissioners shall occur and shall be filled ~~((by a majority vote of the remaining commissioners))~~ as provided in chapter 42.12 RCW.

Sec. 47. RCW 36.69.440 and 1979 ex.s. c 11 s 3 are each amended to read as follows:

(1) If the petition filed under RCW 36.69.430 is found to contain a sufficient number of signatures, the legislative authority of each county shall set a time for

a hearing on the petition for the formation of a park and recreation district as prescribed in RCW 36.69.040.

(2) At the public hearing the legislative authority (~~for each authority~~) for each county shall fix the boundaries for that portion of the proposed park and recreation district that lies within the county as provided in RCW 36.69.050. Each county shall notify the other county or counties of the determination of the boundaries within ten days.

(3) If the territories created by the county legislative authorities are not contiguous, a joint park and recreation district shall not be formed. If the territories are contiguous, the county containing the portion of the proposed joint district having the larger population shall determine the name of the proposed joint district. .

~~(4) (If the proposed district encompasses portions of two counties, the county containing the portion of the district having the larger population shall divide the territory into three subdivisions and shall name three resident electors as prescribed by RCW 36.69.060. The county containing the territory having the smaller population shall divide that territory into two subdivisions and name two resident electors.~~

~~(5) If the proposed district encompasses portions of more than two counties, the district shall be divided into five subdivisions and resident electors shall be named as follows:~~

~~The number of subdivisions and resident electors to be established by each county shall reflect the proportion of population within each county portion of the proposed district in relation to the total population of the proposed district, provided that each county shall designate one subdivision and one resident elector.~~

(6)) The proposition for the formation of the proposed joint park and recreation district shall be submitted to the voters of the district at the next general election, which election shall be conducted as required by RCW 36.69.070 and 36.69.080.

Sec. 48. RCW 52.14.010 and 1985 c 330 s 2 are each amended to read as follows:

The affairs of the district shall be managed by a board of fire commissioners composed of three (~~resident electors of~~) registered voters residing in the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive fifty dollars per day or portion thereof, not to exceed four thousand eight hundred dollars per year, for attendance at board meetings and for performance of other services in behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all (~~firemen~~) fire fighters of the district: PROVIDED, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which ~~((said))~~ the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer ~~((firemen))~~ fire fighters without compensation. A commissioner actually serving as a volunteer ~~((fireman))~~ fire fighter may enjoy the rights and benefits of a volunteer ~~((fireman))~~ fire fighter. ~~((The first commissioners shall take office immediately when qualified in accordance with RCW 29.01.135 and shall serve until after the next general election for the selection of commissioners and until their successors have been elected and have qualified and have assumed office in accordance with RCW 29.04.170.))~~

Sec. 49. RCW 52.14.013 and 1992 c 74 s 2 are each amended to read as follows:

The board of fire commissioners of a fire protection district may adopt a resolution by unanimous vote causing a ballot proposition to be submitted to voters of the district authorizing the creation of commissioner districts. The board of fire commissioners shall create commissioner districts if the ballot proposition authorizing the creation of commissioner districts is approved by a simple majority vote of the voters of the fire protection district voting on the proposition. Three commissioner districts shall be created for a fire protection district with three commissioners, and five commissioner districts shall be created for a fire protection district with five commissioners. No two commissioners may reside in the same commissioner district.

No change in the boundaries of any commissioner district shall be made within one hundred twenty days next before the date of a general district election, nor within twenty months after the commissioner districts have been established or altered. However, if a boundary change results in one commissioner district being represented by two or more commissioners, those commissioners having the shortest unexpired terms shall be assigned by the commission to commissioner districts where there is a vacancy, and the commissioners so assigned shall be deemed to be residents of the commissioner districts to which they are assigned for purposes of determining whether those positions are vacant.

The population of each commissioner district shall include approximately equal population. Commissioner districts shall be redrawn as provided in chapter 29.70 RCW. Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a

commissioner of the commissioner district. Voters of the entire fire protection district may vote at a general election to elect a person as a commissioner of the commissioner district.

When a board of fire commissioners that has commissioner districts has been increased to five members under RCW 52.14.015, the board of fire commissioners shall divide the fire protection district into five commissioner districts before it appoints the two additional fire commissioners. The two additional fire commissioners who are appointed shall reside in separate commissioner districts in which no other fire commissioner resides.

Sec. 50. RCW 52.14.015 and 1990 c 259 s 14 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 ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative 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. 51. RCW 52.14.030 and 1984 c 230 s 31 are each amended to read as follows:

~~((The polling places for district elections shall be those of the county voting precincts which include any of the territory within the fire protection districts. District elections))~~ The polling places for a fire protection district election may be located inside or outside the boundaries of the district ((and)), as determined by the auditor of the county in which the fire protection district is located, and

the elections of the fire protection district shall not be held to be irregular or void on that account.

Sec. 52. RCW 52.14.050 and 1989 c 63 s 21 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. 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 is not a majority of the full number of commissioners in office as fixed by law, the county legislative authority 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.~~

~~An appointee shall serve ad interim until a successor has been elected and qualified at the next general election as provided in chapter 29.21 RCW. 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.)~~

Vacancies on a board of fire commissioners shall occur as provided in chapter 42.12 RCW. In addition, 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~~)) on a board of fire commissioners shall be filled as provided in chapter 42.12 RCW.

Sec. 53. RCW 52.14.060 and 1989 c 63 s 22 are each amended to read as follows:

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))~~ 29.15.170 and 29.15.180, as if there were a vacancy. The ~~((candidate for each position))~~ person who receives the greatest number of votes for each position 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 hold office for a term of six years, the winning candidate receiving the next highest number of votes shall 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. 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 initial fire commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when elected and qualified and their terms of office ((~~of the initially elected fire commissioners~~)) shall be calculated from the first day of January in the year following their election.

The term of office of each subsequent commissioner shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

Sec. 54. RCW 53.12.140 and 1959 c 17 s 9 are each amended to read as follows:

A vacancy in the office of port commissioner shall occur ((~~by death, resignation, removal, conviction of a felony,~~) as provided in chapter 42.12 RCW or by nonattendance at meetings of the port commission for a period of sixty days unless excused by the port commission((~~, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty~~)). A vacancy on a port commission shall be filled as provided in chapter 42.12 RCW.

Sec. 55. RCW 54.08.060 and 1979 ex.s. c 126 s 36 are each amended to read as follows:

Whenever a proposition for the formation of a public utility district is to be submitted to voters in any county, the county legislative authority may by resolution call a special election, and at the request of petitioners for the formation of such district contained in the petition shall do so and shall provide for holding the same at the earliest practicable time. If the boundaries of the proposed district embrace an area less than the entire county, such election shall be confined to the area so included. The notice of such election shall state the boundaries of the proposed district and the object of such election; in other

respects, such election shall be held and called in the same manner as provided by law for the holding and calling of general elections: PROVIDED, That notice thereof shall be given for not less than ten days nor more than thirty days prior to such special election. In submitting the (~~said~~) proposition to the voters for their approval or rejection, such proposition shall be expressed on the ballots in substantially the following terms:

Public Utility District No. YES
Public Utility District No. NO

At the same special election on the proposition to form a public utility district, there shall also be an election for three public utility district commissioners(~~(+ PROVIDED, That)~~). However, the election of such commissioners shall be null and void if the proposition to form the public utility district does not receive approval by a majority of the voters voting on the proposition. (~~Nomination for and election of public utility district commissioners shall conform with the provisions of RCW 54.12.010 as now or hereafter amended, except for the day of such election and the term of office of the original commissioners.~~) No primary shall be held. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district shall be elected as the commissioner of that district. Commissioner districts shall be established as provided in RCW 54.12.010. The terms of the initial commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an even-numbered year or a five-year term if the election is held in an odd-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an even-numbered year or a three-year term of office if the election is held in an odd-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an even-numbered year or a one-year term of office if the election is held in an odd-numbered year. The commissioners first to be elected at such special election shall (~~hold office from the first day of the month following the commissioners' election for the terms as specified in this section which terms shall be computed from the first day in January next following the election. If such special election was held in an even-numbered year, the commissioners residing in commissioner district number one shall hold office for the term of six years, the commissioner residing in commissioner district number two shall hold office for the term of four years, and the commissioner residing in commissioner district number three shall hold office for the term of two years. If such special election was held in an odd-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of five years, the commissioner residing in commissioner district number two shall hold office for the term of three years, and the commissioner residing in commissioner district~~

~~number three shall hold office for the term of one year~~) assume office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day in January in the year following their elections.

The term "general election" as used herein means biennial general elections at which state and county officers in a noncharter county are elected.

Sec. 56. RCW 54.12.010 and 1990 c 59 s 109 are each amended to read as follows:

~~((Within ten days after such election, the county canvassing board shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the canvassing board shall so declare in its canvass of the returns of such election, and such public utility district shall then be and become))~~ A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. of County.

The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.

When the public utility district is ~~((coextensive with the limits of such county))~~ county-wide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change shall have been made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county ~~((commissioner))~~ legislative authority districts ~~((of the county in which the public utility district is located if the county is not operating under a "Home Rule" charter))~~. When the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or when the public utility district is ~~((located in a county operating under a "Home Rule" charter))~~ county-wide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, ~~((having))~~ each with approximately equal population and ~~((boundaries;))~~ following ~~((ward and))~~ precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, which shall be subject to appropriate change by the county legislative authority if and when ~~((they))~~ it changes the boundaries of the proposed public utility district, and one commissioner shall be elected ~~((from each of said))~~ as a commissioner of each of the public utility district commissioner districts. ~~((In all five commissioner districts an additional commissioner at large shall be chosen from each of the two at large districts. No person shall be eligible to be elected to the office of public utility district commissioner for a particular district commissioner district unless he is a registered voter of the public utility district commissioner district or at large district from which he is elected.))~~ Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commis-

sioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.

~~((Except as otherwise provided,)) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29.04.170 following the commissioner's election. ((One commissioner at large and one commissioner from a commissioner district shall be elected at each general election held in an even-numbered year for the term of four years and six years respectively. All candidates shall be voted upon by the entire public utility district.~~

~~When a public utility district is formed, three public utility district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such public utility district shall be formed. If the general election adopting the proposition to create the public utility district was held in an even-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of six years; the commissioner residing in commissioner district number two shall hold office for the term of four years; and the commissioner residing in commissioner district number three shall hold office for the term of two years. If the general election adopting the proposition to create the public utility district was held in an odd-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of five years, the commissioner in district two shall hold office for the term of three years, and the commissioner in district three shall hold office for the term of one year. The commissioners first to be elected as above provided shall hold office from the first day of the month following the commissioners' election and their respective terms of office shall be computed from the first day of January next following the election.))~~

All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29.04.170. ~~((A filing for nomination for public utility district commissioner shall be accompanied by a petition signed by one hundred registered voters of the public utility district which shall be certified by the county auditor to contain the required number of registered voters, and shall otherwise be filed in accord with the requirements of Title 29 RCW. At the time of filing such nominating petition, the person so nominated shall execute and file a declaration of candidacy subject to the provisions of Title 29 RCW, as now or hereafter amended. The petition and each page of the petition shall state whether the nomination is for a commissioner from a particular commissioner district or for a commissioner at large and shall state the districts; otherwise it shall be void.))~~

A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by ~~((death, resignation, removal, conviction of a felony,))~~ nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission ~~((, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office, such vacancy shall be filled at the next general election held in an even-numbered year, the vacancy in the interim to be filled by appointment by the remaining commissioners. If more than one vacancy exists at the same time in a three commissioner district, or more than two in a five commissioner district, a special election shall be called by the county canvassing board upon the request of the remainder, or, that failing, by the county election board, such election to be held not more than forty days after the occurring of such vacancies.~~

~~A majority of the persons holding the office of public utility district commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners fixed by law).~~ Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

The boundaries of the public utility district ~~((commissioners²))~~ commissioner districts may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29.70 RCW, but ~~((said))~~ the boundaries shall not be changed oftener than once in four years, and only when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, the boundaries of the public utility ~~((commissioners²))~~ commissioner districts shall be changed to include such additional territory. The proposed change of the boundaries of the public utility district ~~((commissioners²))~~ commissioner district must be made by resolution and after public hearing. Notice of the time of a public hearing thereon shall be published for two weeks prior thereto. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit such proposed change of boundaries to the voters of the public utility district for their approval or rejection. Such petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of ~~((said))~~ the petition shall be governed by the provisions of chapter 54.08 RCW.

Sec. 57. RCW 54.40.010 and 1977 ex.s. c 36 s 1 are each amended to read as follows:

A five commissioner public utility district is a district ~~((which shall have))~~ that (1) either: (a) Has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred

and fifty million dollars, including interest during construction (~~(, and which shall have received the approval of the)~~); or (b) has a population of five hundred thousand or more; and (2) voters of the district approved a ballot proposition authorizing the district to become a five commissioner district as provided (~~herein~~) under RCW 54.40.040. All other public utility districts shall be known as three commissioner districts.

Sec. 58. RCW 54.40.040 and 1977 ex.s. c 36 s 4 are each amended to read as follows:

A public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, shall be classified as a five commissioner district (~~(only by approval of the qualified)~~) if voters of the district (~~(Such approval shall be by an election upon petition as hereinafter provided)~~) approve a ballot proposition authorizing the change. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot in substantially the following terms:

Shall Public Utility District No. . . . be reclassified a Five Commissioner District for the purpose of increasing the number of commissioners to five . . . YES
NO

Should a majority of the voters voting on the question approve the proposition, the district shall be declared a five commissioner district upon the (~~completion of the canvass~~) certification of the election returns.

Sec. 59. RCW 54.40.050 and 1977 ex.s. c 36 s 5 are each amended to read as follows:

The question of reclassification of a public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, as a five commissioner public utility district shall be submitted to the voters (~~(only upon filing)~~) if a petition proposing the change is filed with the county auditor of the county in which (~~(said)~~) the district is located, identifying the district by number and praying that an election be held to determine whether it shall become a five commissioner district. The petition must be signed by a number of (~~(qualified)~~) registered voters of the district equal to at least ten percent of the number of registered voters in the district who voted at the last general election (~~(In addition to the signature of the voter, the petition must indicate)~~) and include each signer's residence address (~~(and further indicate whether he is registered in a precinct in an unincorporated area or a precinct in an incorporated area and if the latter, give the name of the city or town wherein he is registered. Said)~~).

The petition shall be ~~((presented to))~~ filed with the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor ~~((, in conjunction with the city clerks of the incorporated areas in which any signer is registered,))~~ shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed.

If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify ~~((such fact))~~ its sufficiency to the public utility district and if the commissioners of the public utility district ~~((have theretofore))~~ had certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a five commissioner district. ~~((Such))~~ The election shall be held ~~((on a date fixed by the county auditor which date shall be held at the next general election after the date on which he certified the sufficiency of the petition. Notice of any election on the question shall be given in the manner prescribed for notice of an election on the formation of a public utility district))~~ at the next state general election occurring sixty or more days after the petition was certified as having sufficient valid signatures.

Sec. 60. RCW 54.40.060 and 1977 ex.s. c 36 s 6 are each amended to read as follows:

If the reclassification to a five commissioner district is approved by the voters, the public utility district commission within ~~((ten))~~ sixty days after the results of said election are certified shall divide the public utility district into two districts of as nearly equal population ~~((and area))~~ as possible, and shall designate ~~((such))~~ the districts as ~~((At Large))~~ District A and ~~((At Large))~~ District B.

Sec. 61. RCW 54.40.070 and 1977 ex.s. c 36 s 7 are each amended to read as follows:

Within thirty days after the public utility district commission ~~((shall))~~ divides the district into ~~((two at large districts))~~ District A and District B, the county legislative authority shall call a special election, to be held at the next ~~((scheduled))~~ special election ~~((called pursuant to))~~ date provided for under RCW 29.13.010 ~~((, or not more than ninety days after such))~~ that occurs sixty or more days after the call, at which time the initial commissioners ~~((to such at large districts))~~ for District A and District B shall be elected ~~((,)).~~ No primary shall be held and a special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected.

The person who is elected receiving the ~~((largest))~~ greatest number of votes ~~((to serve for four years))~~ shall be elected to a four-year term of office, and the other person ~~((receiving the next largest number of votes to serve an initial term of two years))~~ who is elected shall be elected to a two-year term of office, if the election is held in an even-numbered year, or the person who is elected receiving the greatest number of votes shall be elected to a three-year term of office, and the other person who is elected shall be elected to a one-year term of office, if the election is held in an odd-numbered year. The length of these terms of office shall be calculated from the first day in January in the year following their elections.

The newly elected commissioners shall assume office immediately after being elected and qualified and shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. Each successor shall be elected to a four-year term of office.

Sec. 62. RCW 56.12.015 and 1991 c 190 s 2 are each amended to read as follows:

If a three-member board of commissioners of any sewer district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a sewer district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the sewer district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of sewer district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the sewer district shall be increased to five members. In any sewer district with more than ten thousand customers, if a three-member board of commissioners 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, the number of commissioners shall be so increased~~((?))~~ without an election, unless within ninety days of adoption of that resolution, a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election

in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of sewer commissioners by this section shall be filled initially either as for a vacancy or by nomination under RCW 56.12.030, except that the appointees or newly elected commissioners shall draw lots, one appointee to serve until the next general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms.

Sec. 63. RCW 56.12.020 and 1979 ex.s. c 126 s 38 are each amended to read as follows:

~~At the election held to form or reorganize a sewer district, ((there shall be elected three commissioners who shall assume office immediately when qualified in accordance with RCW 29.01.135 to hold office for terms of two, four, and six years respectively, and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.~~

~~The term of each nominee shall be expressed on the ballot and shall be computed from the first day of January next following if the initial election of the sewer district commissioners was in a general district election as provided in RCW 29.13.020, or from the first day of January following the first general election for sewer districts after its creation if the initial election was on a date other than a general district election. Thereafter, every two years there shall be elected a commissioner for a term of six years and until his or her successor is elected and qualified, at the general election held in the odd-numbered years, as provided in RCW 29.13.020, and conducted by the county auditor and the returns shall be canvassed by the county canvassing board of election returns: PROVIDED, That each such commissioner shall assume office in accordance with RCW 29.04.170))~~ three sewer district commissioners shall be elected. The election of sewer district commissioners shall be null and void if the ballot proposition to form or reorganize the sewer district is not approved. Candidates shall run for one of three separate commissioner positions. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected to that position.

The newly elected sewer district commissioners shall assume office immediately when they are elected and qualified. Staggering of the terms of office for the new sewer district commissioners shall be accomplished as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-

year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The terms of office shall be calculated from the first day of January in the year following the election.

Thereafter commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Sec. 64. RCW 56.12.030 and 1990 c 259 s 24 are each amended to read as follows:

~~((1) Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty registered voters or ten percent of the registered voters of the district who voted in the last general municipal election, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least forty five days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and the appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the county legislative authority. Any person residing in the district who is at the time of election a registered voter may vote at any election held in the sewer district.~~

~~(2) Subsection (1) of this section notwithstanding,)) The board of commissioners of any sewer district may ((provide by majority vote that subsequent commissioners be elected from commissioner districts)) adopt a resolution providing that each subsequent commissioner be elected as a commissioner of a commissioner district within the district. If the board exercises this option, it shall divide the district into ((three)) a number of commissioner districts ((of)) equal in number to the number of commissioners on the board, each with approximately equal population following current precinct and district boundaries as far as practicable. ((Thereafter, candidates shall be nominated and one candidate shall be elected from each commissioner district by the registered voters of the commissioner district.~~

~~(3) All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or~~

~~reorganized.)~~ Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire sewer district may vote at a general election to elect a person as a commissioner of the commissioner district. Commissioner districts shall be redrawn as provided in chapter 29.70 RCW.

NEW SECTION. Sec. 65. A new section is added to chapter 56.12 RCW to read as follows:

Sewer district elections shall conform with general election laws.

Vacancies on a board of sewer commissioners shall occur and shall be filled as provided in chapter 42.12 RCW.

Sec. 66. RCW 57.02.050 and 1982 1st ex.s. c 17 s 5 are each amended to read as follows:

Whenever the boundaries or proposed boundaries of a water district include or are proposed to include by means of formation, annexation, consolidation, or merger (including merger with a sewer district) territory in more than one county, all duties delegated by Title 57 RCW to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to (~~RCW 57.02.060, as now existing or hereafter amended~~) general election law, actions subject to review and approval under RCW 57.02.040 and 56.02.070 shall be reviewed and approved only by the officers or boards in the county in which such actions are proposed to occur, verification of electors' signatures shall be conducted by the county election officer of the county in which such signators reside, and comprehensive plan review and approval or rejection by the respective county legislative authorities under RCW 57.16.010 shall be limited to that part of such plans within the respective counties.

Sec. 67. RCW 57.12.015 and 1991 c 190 s 6 are each amended to read as follows:

In the event a three-member board of commissioners of any water district with any number of customers determines by resolution 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 of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the water district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of water district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the water district shall be increased to five members. In any water district with more than ten thousand customers, if a three-member board of commissioners 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, the number of commissioners shall be so increased~~((:))~~ without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of water commissioners by this section shall be filled initially either as for a vacancy or by nomination under RCW 57.12.039, except that the appointees or newly elected commissioners shall draw lots, one appointee to serve until the next general water district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general water district election after the appointment, at which two commissioners shall be elected for six-year terms.

Sec. 68. RCW 57.12.020 and 1990 c 259 s 30 are each amended to read as follows:

~~((Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least ten percent of the registered voters of the district who voted in the last general municipal election, filed in the auditor's office of the county in which the district is located, at least forty five days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws.))~~

A vacancy ~~((or vacancies))~~ on the board shall occur and shall be filled ~~((by appointment by the remaining commissioner or commissioners until the next regular election for commissioners. PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and the appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment~~

or appointments. If there is a vacancy of the entire board a new board may be appointed by the county legislative authority.

~~Any person residing in the district who is a registered voter under the laws of the state may vote at any district election))~~ as provided in chapter 42.12 RCW.

Sec. 69. RCW 57.12.030 and 1982 1st ex.s. c 17 s 14 are each amended to read as follows:

~~((The general laws of the state of Washington governing the registration of voters for a general or a special city election shall govern the registration of voters for elections held under this chapter. The manner of holding any general or special election for said))~~ Water district elections shall be held in accordance with the general election laws of this state. ((All elections in a water district shall be conducted under RCW 57.02.060. All expenses of elections for a water district shall be paid for out of the funds of the water district. PROVIDED, That if the voters fail to approve the formation of a water district, the expenses of the formation election shall be paid by each county in which the proposed district is located, in proportion to the number of registered voters in the proposed district residing in each county:))

Except as in this section otherwise provided, the term of office of each water district commissioner shall be six years, such term to be computed from the first day of January following the election, and ~~((one commissioner shall be elected at each biennial general election, as provided in RCW 29.13.020, for the term of six years and until his or her successor is))~~ commissioners shall serve until their successors are elected and qualified and assume((s)) office in accordance with RCW 29.04.170. ((All candidates shall be voted upon by the entire water district:))

Three water district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such water district shall be formed. ~~((The commissioner elected in commissioner position number one shall hold office for the term of six years; the commissioner elected in commissioner position number two shall hold office for the term of four years; and the commissioner elected in commissioner position number three shall hold office for the term of two years. PROVIDED, That the members of the first commission shall take office immediately upon their election and qualification. The terms of all commissioners first to be elected shall also include the time intervening between the date that the results of their election are declared in the canvass of returns thereof and the first day of January following the next general district election as provided in RCW 29.13.020.))~~ The election of water district commissioners shall be null and void if the ballot proposition to form the water district is not approved. Each candidate shall run for one of three separate commissioner positions. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected to that position.

The newly elected water district commissioners shall assume office immediately when they are elected and qualified. Staggering of the terms of

office for the new water district commissioners shall be accomplished as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Sec. 70. RCW 57.12.039 and 1986 c 41 s 2 are each amended to read as follows:

(1) Notwithstanding RCW 57.12.020 and 57.12.030, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three, or five if the number of commissioners has been increased under RCW 57.12.015, commissioner districts of approximately equal population following current precinct and district boundaries. (~~Thereafter, candidates shall be nominated and one candidate shall be elected from each commissioner district by the electors of the commissioner district.~~)

(2) Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire water district may vote at a general election to elect a person as a commissioner of the commissioner district. Commissioner districts shall be redrawn as provided in chapter 29.70 RCW.

(3) In water districts in which commissioners are nominated from commissioner districts, at the inception of a five-member board of commissioners, the new commissioner districts shall be numbered one through five and the three incumbent commissioners shall represent commissioner districts one through three. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from districts four and five where necessary and commissioners shall be elected at large at the general election. The persons elected as commissioners from commissioner districts four and five shall take office immediately after qualification as defined under RCW 29.01.135.

Sec. 71. RCW 57.32.022 and 1982 1st ex.s. c 17 s 31 are each amended to read as follows:

The respective boards of water commissioners of the consolidating districts shall certify the agreement to the county election officer of each county in which the districts are located. A special election shall be called by the county election officer (~~(under RCW 57.02.060)~~) for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one water district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws.

Sec. 72. RCW 57.32.023 and 1982 1st ex.s. c 17 s 32 are each amended to read as follows:

If at the election a majority of the voters in each of the consolidating districts vote in favor of the consolidation, the county canvassing board shall so declare in its canvass (~~(under RCW 57.02.060)~~) and the return of such election shall be made within ten days after the date thereof. Upon the return the consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new water district and municipal corporation of the state of Washington. The name of such new water district shall be "Water District No.", which shall be the name appearing on the ballot. The district shall have all and every power, right, and privilege possessed by other water districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive plan of water supply contained in the agreement for consolidation and any future additions and betterments to the comprehensive plan of water supply, as its board of water commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district.

NEW SECTION. **Sec. 73.** A new section is added to chapter 68.52 RCW to read as follows:

Cemetery district elections shall conform with general election laws.

A vacancy on a board of cemetery district commissioners shall occur and shall be filled as provided in chapter 42.12 RCW.

Sec. 74. RCW 68.52.100 and 1947 c 6 s 2 are each amended to read as follows:

For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the (~~(qualified)~~) registered (~~(electors, who are property owners or are purchasing property under contract and who are resident)~~) voters who reside within the boundaries of the proposed district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the

proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof ~~((and for such purpose shall have access to registration books and records in possession of the registration officers of the election precincts included in whole or in part within the boundaries of the proposed district and to the tax rolls and other records in the offices of the county assessor and county treasurer. No person having))~~. The name of any person who signed a petition shall not be ((allowed to withdraw his name therefrom)) withdrawn from the petition after it has been filed with the county auditor. If the petition is found to contain a sufficient number of valid signatures ((of qualified persons)), the county auditor shall transmit it, with ~~((his))~~ a certificate of sufficiency attached, to the ((board of)) county ((commissioners)) legislative authority, which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear ~~((said))~~ the petition.

Sec. 75. RCW 68.52.140 and 1982 c 60 s 2 are each amended to read as follows:

The ~~((board of))~~ county ((commissioners)) legislative authority shall have full authority to hear and determine the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the ~~((board))~~ county legislative authority finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. ~~((The board shall, prior to calling the said election, name three registered resident electors who are property owners or are purchasing property under contract within the boundaries of the district as candidates for election as cemetery district commissioners. These electors are exempt from the requirements of chapter 42.17 RCW.))~~ At the same election three cemetery district commissioners shall be elected, but the election of the commissioners shall be null and void if the district is not created. No primary shall be held. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. Candidates shall run for specific commissioner positions. The person receiving the greatest number of votes for each commissioner position shall be elected to that commissioner position. The terms of office of the initial commissioners shall be as provided in RCW 68.52.220.

Sec. 76. RCW 68.52.160 and 1947 c 6 s 8 are each amended to read as follows:

The ballot for ~~((said))~~ the election shall be in such form as may be convenient but shall present the propositions substantially as follows:

" . . .(insert county name). . . cemetery district No. . . .(insert number). . .
 . . .Yes. . .
 . . .(insert county name). . . cemetery district No. . . .(insert number). . .
 . . .No. . . "

~~((and shall specify the names of the candidates nominated for election as the first cemetery district commissioners with appropriate space to vote for the same.))~~

Sec. 77. RCW 68.52.220 and 1990 c 259 s 33 are each amended to read as follows:

The affairs of the district shall be managed by a board of cemetery district commissioners composed of three ~~((qualified registered voters of the district))~~ members. Members of the board shall receive no compensation for their services, but shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board shall fix the compensation to be paid the secretary and other employees of the district. ~~((The first three cemetery district commissioners shall serve only until the first day in January following the next general election, provided such election occurs thirty or more days after the formation of the district, and until their successors have been elected and qualified and have assumed office in accordance with RCW 29.04.170. At the next general district election, as provided in RCW 29.13.020, provided it occurs thirty or more days after the formation of the district, three members of the board of cemetery commissioners shall be chosen. They and all subsequently elected cemetery commissioners shall have the same qualifications as required of the first three cemetery commissioners and))~~ Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW. ~~((The candidate receiving the highest number of votes shall serve for a term of six years beginning on the first day in January following; the candidate receiving the next higher number of votes shall serve for a term of four years from the date; and the candidate receiving the next higher number of votes shall serve for a term of two years from the date. Upon the expiration of their respective terms, all cemetery commissioners shall be elected for terms of six years to begin on the first day in January next succeeding the day of election and shall serve until their successors have been elected and qualified and assume office in accordance with RCW 29.04.170. Elections shall be called, noticed, conducted and canvassed and in the same manner and by the same officials as provided for general county elections.))~~

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is

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

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29.04.170.

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

Sec. 78. RCW 70.44.040 and 1990 c 259 s 39 are each amended to read as follows:

(1) The provisions of Title 29 RCW relating to elections shall govern public hospital districts, except ((that:-(1))) as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition ((to form a hospital district shall)) exceeds forty percent of the total number of votes cast in the ((precincts comprising the)) proposed district at the preceding state general ((and county)) election((+and (2) hospital district commissioners shall hold office for the term of six years and until their successors are elected and qualified, each term to commence on the first day in January following the election)).

At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected ((to hold office, respectively, for the terms of two, four, and six years. All candidates shall be voted upon by the entire district, and the candidate residing in commissioner district No. 1 receiving the highest number of votes in the hospital district shall hold office for the term of six years; the candidate residing in commissioner district No. 2 receiving the highest number of votes in the hospital district shall hold office for the term of four years; and the candidate residing in commissioner district No. 3 receiving the highest number of votes in the hospital district shall hold office for the term of two years. The first commissioners to be elected shall take office immediately when qualified in accordance with RCW 29.01.135. Each term of the initial commissioners shall date from the time above specified following the organizational election, but shall also include the period intervening between the organizational election and the first day of January following the next district general election: PROVIDED, That in public hospital districts encompassing portions of more than one county, the total vote

~~east upon the proposition to form the district shall exceed forty percent of the total number of votes cast in each portion of each county lying within the proposed district at the next preceding general county election. The portion of the proposed district located within each county shall constitute a separate commissioner district. There shall be three district commissioners whose terms shall be six years. Each district shall be designated by the name of the county in which it is located. All candidates for commissioners shall be voted upon by the entire district. Not more than one commissioner shall reside in any one district. PROVIDED FURTHER, That in the event there are only two districts then two commissioners may reside in one district. The term of each commissioner shall commence on the first day in January in each year following his election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. The candidate receiving the highest number of votes within the district, as constituted by the election, shall serve a term of six years; the candidate receiving the next highest number of votes shall hold office for a term of four years; and the candidate receiving the next highest number of votes shall hold office for a term of two years. PROVIDED FURTHER, That the holding of each such term of office shall be subject to the residential requirements for district commissioners hereinbefore set forth in this section)). The election of the initial commissioners shall be null and void if the district is not authorized to be created.~~

No primary shall be held. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (b) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when they are elected and qualified, but the length of such terms shall be computed from the first day of January in the year following this election. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

(2) Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (b) only voters of a

commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public hospital district may vote at a general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district is county-wide, and the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial three public hospital district commissioner districts, each of which shall constitute as nearly as possible one-third of the total population of the proposed public hospital district and number the districts one, two, and three. Each of the three commissioner positions shall be numbered one through three and associated with the district of the same number.

The public hospital district commissioners may redraw commissioner districts, if the public hospital district has boundaries that are not coterminous with the boundaries of a county with three county legislative authority districts, so that each district comprises as nearly as possible one-third of the total population of the public hospital district. The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall redraw hospital district commissioner boundaries as provided in chapter 29.70 RCW.

Sec. 79. RCW 70.44.045 and 1982 c 84 s 13 are each amended to read as follows:

A vacancy in the office of commissioner shall occur as provided in chapter 42.12 RCW or by ((death, resignation, removal, conviction of felony,)) nonattendance at meetings of the commission for sixty days, unless excused by the commission((, by any statutory disqualification, by any permanent disability preventing the proper discharge of his duty, or by creation of positions pursuant to RCW 70.44.051, et seq)). A vacancy ((or vacancies on the board)) shall be filled ((by appointment by the remaining commissioner or commissioners until the next regular election for commissioners as provided by RCW 70.44.040: PROVIDED, That if there is only one remaining commissioner, one vacancy shall be filled by appointment by the remaining commissioner and the remaining vacancy or vacancies shall be filled by appointment by the then two commissioners and the appointed commissioners shall serve until the next regular election for commissioners: PROVIDED FURTHER, That if there is a vacancy of the entire board, a new board may be appointed by the board of county commissioners or county council)) as provided in chapter 42.12 RCW.

Sec. 80. RCW 70.44.053 and 1967 c 77 s 2 are each amended to read as follows:

At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent

of the ~~((electors))~~ voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to ~~((any number authorized in RCW 70.44.054))~~ either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members.

If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the board of commissioners shall redistrict the public hospital district into the appropriate number of commissioner districts. The additional commissioners shall be elected from commissioner districts in which no existing commissioner resides at the next state general election occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, a primary shall not be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term.

Where the number of commissioners is increased from three to five, the initial terms of the two new commissioners shall be staggered so that the person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term if the election is held in an even-numbered year, and the other person elected shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term if the election is held in an even-numbered year. The newly elected commissioners shall assume office as provided in RCW 29.04.170.

Where the number of commissioners is increased from three or five to seven, the county auditor of the county in which all or the largest portion of the hospital district is located shall cause the initial terms of office of the additional commissioners to be staggered over the next three district general elections so that two commissioners would normally be elected at the first district general election following the election where the additional commissioners are elected, two commissioners are normally elected at the second district general election after the election of the additional commissioners, and three commissioners are normally elected at the third district general election following the election of the additional commissioners. The newly elected commissioners shall assume office as provided in RCW 29.04.170.

Sec. 81. RCW 53.12.010 and 1992 c 146 s 1 are each amended to read as follows:

(1) The powers of the port district shall be exercised through a port commission consisting of three or, when permitted by this title, five members. Every port district that is not coextensive with a county having a population of five hundred thousand or more shall be divided into ~~((three))~~ the same number of commissioner districts as there are commissioner positions, each having approximately equal population, unless provided otherwise under subsection (2) of this section. Where a port district with three commissioner positions is coextensive with the boundaries of a county that has a population of less than five hundred thousand and the county has three county legislative authority districts, the port ~~((district))~~ commissioner districts shall be the county legislative authority districts. In other instances where a port district is divided into commissioner districts, the ~~((petition proposing the formation of such a))~~ port commission shall divide the port district ((shall describe three)) into commissioner districts ((each having approximately the same population and)) unless the commissioner districts have been described pursuant to section 81 of this act. The commissioner districts shall be altered as provided in chapter 53.16 RCW.

Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (2) only the voters of a commissioner district may vote at a primary ~~((election))~~ to nominate candidates for a commissioner of the commissioner district. Voters of the entire port district may vote at a general election to elect a person as a commissioner of the commissioner district.

~~((In port districts having additional commissioners as authorized by RCW 53.12.120, 53.12.130, and 53.12.115, the powers of the port district shall be exercised through a port commission consisting of five members constituted as provided therein.))~~

(2) In port districts with five commissioners, two of the commissioner districts may include the entire port district if approved by the voters of the district either at the time of formation or at a subsequent port district election at which the issue is proposed pursuant to a resolution adopted by the board of commissioners and delivered to the county auditor.

NEW SECTION. Sec. 82. A new section is added to chapter 53.12 RCW to read as follows:

Any less than county-wide port district that uses commissioner districts may cease using commissioner districts as provided in this section.

A ballot proposition authorizing the elimination of commissioner districts shall be submitted to the voters of a less than county-wide port district that is divided into commissioner districts if (1) a petition is submitted to the port commission proposing that the port district cease using commissioner districts, that is signed by registered voters of the port district equal in number to at least ten percent of the number of voters who voted at the last district general election; or (2) the port commissioners adopt a resolution proposing that the port district cease using commissioner districts. The port commission shall transfer the

petition or resolution immediately to the county auditor who shall, when a petition is submitted, review the signatures and certify its sufficiency. A ballot proposition authorizing the elimination of commissioner districts shall be submitted at the next district general election occurring sixty or more days after a petition with sufficient signatures was submitted. If the ballot proposition authorizing the port district to cease using commissioner districts is approved by a simple majority vote, the port district shall cease using commissioner districts at all subsequent elections.

NEW SECTION. Sec. 83. A new section is added to chapter 53.04 RCW to read as follows:

Three commissioner districts, each with approximately the same population, shall be described in the petition proposing the creation of a port district under RCW 53.04.020, if the process to create the port district was initiated by voter petition, or shall be described by the county legislative authority, if the process to initiate the creation of the port district was by action of the county legislative authority. However, commissioner districts shall not be described if the commissioner districts of the proposed port district shall be the same as the county legislative authority districts.

The initial port commissioners shall be elected as provided in RCW 53.12.172.

Sec. 84. RCW 53.04.023 and 1993 c 70 s 1 are each amended to read as follows:

A less than county-wide port district with an assessed valuation of at least seventy-five million dollars may be created in a county that already has a less than county-wide port district located within its boundaries. Except as provided in this section, such a port district shall be created in accordance with the procedure to create a county-wide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port

district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in RCW 29.13.020, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election, from districts or at large, as provided in the petition initiating the creation of the port district. The election shall be otherwise conducted as provided in RCW 53.12.172, but the election of commissioners shall be null and void if the port district is not created. ~~((Commissioner districts shall not be used in the initial election of the port commissioners.))~~

This section shall expire July 1, 1997.

Sec. 85. RCW 53.12.172 and 1992 c 146 s 2 are each reenacted and amended to read as follows:

(1) In every port district the term of office of each port commissioner shall be four years in each port district that is county-wide with a population of one hundred thousand or more, or either six or four years in all other port districts as provided in RCW 53.12.175, and until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

(2) The initial port commissioners shall be elected at the same election as when the ballot proposition is submitted to voters authorizing the creation of the port district. If the port district is created the persons elected at this election shall serve as the initial port commission. No primary shall be held. The person receiving the greatest number of votes for commissioner from each commissioner district shall be elected as the commissioner of that district.

(3) The terms of office of the initial port commissioners shall be staggered as follows in a port district that is county-wide with a population of one hundred thousand or more: ~~((+))~~ (a) The two persons who are elected receiving the two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year, and shall hold office until successors are elected and qualified and assume office in accordance with RCW 29.04.170; and ~~((2))~~ (b) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year, or a one-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

(4) The terms of office of the initial port commissioners in all other port districts shall be staggered as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or to a five-year term of office if the

election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170; (b) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or to a three-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

(5) The initial port commissioners shall take office immediately after being elected and qualified, but the length of their terms shall be calculated from the first day in January in the year following their elections.

Sec. 86. RCW 53.12.115 and 1992 c 146 s 7 are each amended to read as follows:

A ballot proposition shall be submitted to the voters of any port district authorizing an increase in the number of port commissioners to five whenever the port commission adopts a resolution proposing the increase in number of port commissioners or a petition ((requesting)) proposing such an increase has been submitted to the county auditor of the county in which the port district is located that has been signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election. The ballot proposition shall be submitted at the next general or special election occurring sixty or more days after the petition was submitted or resolution was adopted.

At the next general or special election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130, and the voters may be asked to approve the nomination of commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2).

Sec. 87. RCW 53.12.120 and 1992 c 146 s 8 are each amended to read as follows:

When the population of a port district that has three commissioners reaches five hundred thousand, in accordance with the latest United States regular or special census or with the official state population estimate, there shall be submitted to the voters of the district, at the next district general election or at a special port election called for that purpose, the proposition of increasing the number of commissioners to five. ~~((At any general election thereafter, the same proposition may be submitted by resolution of the port commissioners, by filing a certified copy of the resolution with the county auditor at least four months~~

~~prior to the general election. If the proposition is approved by the voters, the commission in that port district shall consist of five commissioners.))~~

At the next district general election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130.

Sec. 88. RCW 53.12.130 and 1992 c 146 s 9 are each amended to read as follows:

Two additional port commissioners shall be elected at the next district general election following the election at which voters authorized the increase in port commissioners to five members. ~~((The two additional positions shall be numbered positions four and five.))~~

The port commissioners shall divide the port district into five commissioner districts prior to the first day of June in the year in which the two additional commissioners shall be elected, unless the voters approved the nomination of the two additional commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2). The new commissioner districts shall be numbered one through five and the three incumbent commissioners shall represent commissioner districts one through three. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from districts four and five where necessary and commissioners shall be elected from commissioner districts four and five at the general election. The persons ~~((receiving the highest number of votes for each position shall be elected to that position and))~~ elected as commissioners from commissioner districts four and five shall take office immediately after qualification as defined under RCW 29.01.135.

In a port district where commissioners are elected to four-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a four-year term of office and the other additional commissioner thus elected shall be elected to a term of office of two years, if the election ~~((were))~~ is held in an odd-numbered year, or the additional commissioner thus elected receiving the highest number of votes shall be elected to a term of office of three years and the other shall be elected to a term of office of one year, if the election ~~((were))~~ is held in an even-numbered year. In a port district where the commissioners are elected to six-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a six-year term of office and the other additional commissioner shall be elected to a four-year term of office, if the election is held in an odd-numbered year, or the additional commissioner receiving the highest number of votes shall be elected to a term of office of five-years and the other shall be elected to a three-year term of office, if the election is held in an even-numbered year. The

length of terms of office shall be computed from the first day of January in the year following this election.

~~((A successor to a commissioner holding position four or five whose term is about to expire, shall be elected at the general election next preceding such expiration, for a))~~ Successor commissioners from districts four and five shall be elected to terms of either six or four years, depending on the length of terms of office to which commissioners of that port district are elected. ~~((Positions four and five shall not be associated with a commissioner district and the elections to both nominate candidates for those positions and elect commissioners for these positions shall be held on a port district wide basis.))~~

Sec. 89. RCW 53.12.175 and 1992 c 146 s 3 are each amended to read as follows:

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

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

Sec. 90. RCW 53.16.015 and 1992 c 146 s 10 are each amended to read as follows:

~~((In a port district that is not coterminous with a county that has three county legislative authority districts and that has port commissioner districts,))~~ The port commission of a port district that uses commissioner districts may redraw the commissioner district boundaries as provided in chapter 29.70 RCW at any time and submit the redrawn boundaries to the county auditor if the port district is not coterminous with a county that has the same number of county legislative authority districts as the port has port commissioners. The new commissioner districts shall be used at the next election at which a port commissioner is regularly elected that occurs at least one hundred eighty days after the redrawn boundaries have been submitted. Each commissioner district shall encompass as nearly as possible ~~((one third of the population of the port district))~~ the same population.

Sec. 91. RCW 29.45.050 and 1973 c 102 s 2 are each amended to read as follows:

There shall be but one set of election officers at any one time in each precinct except as provided in this section.

In every precinct using paper ballots having two hundred or more registered voters there shall be appointed, and in every precinct having less than two hundred registered voters there may be appointed, at a state primary or state general election, two or more sets of precinct election officers as provided in RCW 29.04.020 and 29.45.010. The officer in charge of the election may appoint one or more counting boards at his discretion, when he decides that because of a long or complicated ballot or because of the number of expected voters, there is need of additional counting board or boards to improve the speed and accuracy of the count.

In making such appointments, one or more sets of precinct election officers shall be designated as the counting board or boards, the first of which shall consist of an inspector, two judges, and a clerk and the second set, if activated, shall consist of two judges and two clerks. The duties of the counting board or boards shall be the count of ballots cast and the return of the election records and supplies to the officer having jurisdiction of the election.

One set of precinct election officers shall be designated as the receiving board which shall have all other powers and duties imposed by law for such elections. Nothing in this section prevents the county auditor from appointing relief or replacement precinct election officers at any time during election day. Relief or replacement precinct election officers must be of the same political party as the officer they are relieving or replacing.

NEW SECTION. **Sec. 92.** The following acts or parts of acts are each repealed:

- (1) RCW 35.23.070 and 1965 c 7 s 35.23.070;
- (2) RCW 35.24.070 and 1965 c 7 s 35.24.070;
- (3) RCW 35.27.110 and 1965 c 7 s 35.27.110;
- (4) RCW 35.61.060 and 1985 c 416 s 2 & 1965 c 7 s 35.61.069;
- (5) RCW 35.61.070 and 1965 c 7 s 35.61.070;
- (6) RCW 35.61.080 and 1965 c 7 s 35.61.080;
- (7) RCW 35A.02.001 and 1989 c 84 s 35;
- (8) RCW 35A.02.100 and 1967 ex.s. c 119 s 35A.02.100;
- (9) RCW 35A.02.110 and 1979 ex.s. c 18 s 9 & 1967 ex.s. c 119 s 35A.02.110;
- (10) RCW 35A.14.060 and 1967 ex.s. c 119 s 35A.14.060;
- (11) RCW 35A.15.030 and 1967 ex.s. c 119 s 35A.15.030;
- (12) RCW 35A.16.020 and 1967 ex.s. c 119 s 35A.16.020;
- (13) RCW 35A.29.010 and 1967 ex.s. c 119 s 35A.29.010;
- (14) RCW 35A.29.020 and 1967 ex.s. c 119 s 35A.29.020;
- (15) RCW 35A.29.030 and 1967 ex.s. c 119 s 35A.29.030;
- (16) RCW 35A.29.040 and 1967 ex.s. c 119 s 35A.29.040;

- (17) RCW 35A.29.050 and 1967 ex.s. c 119 s 35A.29.050;
- (18) RCW 35A.29.060 and 1967 ex.s. c 119 s 35A.29.060;
- (19) RCW 35A.29.070 and 1967 ex.s. c 119 s 35A.29.070;
- (20) RCW 35A.29.080 and 1967 ex.s. c 119 s 35A.29.080;
- (21) RCW 35A.29.090 and 1986 c 234 s 32 & 1985 c 281 s 27;
- (22) RCW 35A.29.100 and 1967 ex.s. c 119 s 35A.29.100;
- (23) RCW 35A.29.105 and 1990 c 59 s 106 & 1967 ex.s. c 119 s 35A.29.105;
- (24) RCW 35A.29.110 and 1990 c 59 s 107, 1986 c 167 s 21, 1979 ex.s. c 18 s 30, 1970 ex.s. c 52 s 4, & 1967 ex.s. c 119 s 35A.29.110;
- (25) RCW 35A.29.140 and 1967 ex.s. c 119 s 35A.29.140;
- (26) RCW 35A.29.150 and 1970 ex.s. c 52 s 5 & 1967 ex.s. c 119 s 35A.29.150;
- (27) RCW 36.54.080 and 1973 1st ex.s. c 195 s 36 & 1963 c 4 s 36.54.080;
- (28) RCW 36.54.090 and 1963 c 4 s 36.54.090;
- (29) RCW 36.54.100 and 1963 c 4 s 36.54.100;
- (30) RCW 36.69.060 and 1963 c 4 s 36.69.060;
- (31) RCW 44.70.010 and 1987 c 298 s 7;
- (32) RCW 53.12.047 and 1992 c 146 s 6;
- (33) RCW 53.12.150 and 1990 c 40 s 1, 1985 c 87 s 1, 1983 c 11 s 1, 1959 c 175 s 8, & 1959 c 17 s 8;
- (34) RCW 57.02.060 and 1982 1st ex.s. c 17 s 6;
- (35) RCW 68.52.240 and 1947 c 6 s 16;
- (36) RCW 70.44.051 and 1967 c 77 s 1;
- (37) RCW 70.44.055 and 1967 c 77 s 3; and
- (38) RCW 70.44.057 and 1967 c 77 s 4.

Sec. 93. 1992 c 146 s 14 (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed:

- (1) RCW 53.12.020 and 1991 c 363 s 129, 1986 c 262 s 2, 1965 c 51 s 2, 1959 c 175 s 1, & 1959 c 17 s 4;
- (2) RCW 53.12.035 and 1991 c 363 s 130, 1990 c 59 s 108, 1965 c 51 s 3, & 1959 c 175 s 9;
- (3) RCW 53.12.050 and 1959 c 17 s 5;
- (4) RCW 53.12.057 and 1965 c 51 s 6;
- (5) RCW 53.12.060 and 1990 c 259 s 19, 1959 c 175 s 6, 1927 c 204 s 1, & 1913 c 62 s 3;
- (6) (~~RCW 53.12.172 and 1979 ex.s. c 126 s 34 & 1951 c 68 s 2;~~
- (~~7~~) RCW 53.12.180 and 1935 c 133 s 8;
- (~~8~~) (7) RCW 53.12.190 and 1935 c 133 s 10;
- (~~9~~) (8) RCW 53.12.200 and 1935 c 133 s 9;
- (~~10~~) (9) RCW 53.12.220 and 1979 ex.s. c 126 s 35, 1941 c 45 s 2, & 1925 ex.s. c 113 s 2; and
- (~~11~~) (10) RCW 53.16.010 and 1969 ex.s. c 9 s 1 & 1957 c 69 s 2.

NEW SECTION. **Sec. 94.** (1) Section 2 of this act shall take effect January 1, 1995.

(2) Section 20 of this act shall take effect July 1, 1994.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

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

"I am returning herewith, without my approval as to sections 14, 15, 18, 20, and 37, Substitute House Bill No. 2278 entitled:

"AN ACT Relating to local government election practices;"

Sections 14, 15, and 18 amend sections of the RCW that are repealed in sections 89(8), 89(20), and 89(34) respectively of Substitute House Bill No. 2244. The substance of the amendatory language in these three sections is included in other sections of Substitute House Bill No. 2244. Section 20 amends a section of the RCW that is also repealed in section 89(37) of Substitute House Bill No. 2244. The substance of the amendatory language in this section is included in current law. Section 37 amends RCW 35A.14.060, which is repealed by section 92(10) of Substitute House Bill No. 2278. The substance of this amendatory language is included elsewhere in Substitute House Bill No. 2278. By vetoing these sections, duplication and confusion will be avoided in these statutes.

With the exception of sections 14, 15, 18, 20, and 37, Substitute House Bill No. 2278 is approved."

CHAPTER 224

[House Bill 2300]

**CORRECTIONAL INDUSTRIES—INMATE UNEMPLOYMENT
COMPENSATION ELIGIBILITY**

AN ACT Relating to offender work programs; and amending RCW 72.09.100.

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

Sec. 1. RCW 72.09.100 and 1992 c 123 s 1 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 employer model 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 customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers. The correctional industries board of directors shall review these proposed industries before the department contracts to provide such products or services. The review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community and labor market.

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 comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(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, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons. Correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors. The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. 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 byproducts 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 wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of 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 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 wage paid for work of a similar nature in the locality in which the industry is located.

(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~~) inmate, 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.

Passed the House March 5, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 225

[Engrossed Substitute House Bill 2326]

GASOHOL EXEMPTION REPEALED—GASOHOL EXEMPTION HOLDING ACCOUNT

AN ACT Relating to gasohol; amending RCW 46.68.090; repealing RCW 82.36.2251; providing an effective date; providing for contingent submission of this act to a vote of the people; and declaring an emergency.

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

NEW SECTION. Sec. 1. RCW 82.36.2251 and 1993 c 268 s 2 are each repealed.

Sec. 2. RCW 46.68.090 and 1991 c 342 s 56 are each amended to read as follows:

(1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for the following purposes:

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly;

(c) From April 1, 1992, through March 31, 1996, for distribution to the transfer relief account, hereby created in the motor vehicle fund, an amount not to exceed three hundred twenty-five one-thousandths of one percent;

(d) For distribution to the rural arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(2) and 46.68.095(3);

(e) For distribution to the urban arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(3);

(f) For distribution to the transportation improvement account in the motor vehicle fund, an amount as provided in RCW 46.68.095(1);

(g) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(2);

(h) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(4);

(i) For distribution to the motor vehicle fund to be allocated to cities and towns as provided in RCW 46.68.110, an amount as provided in RCW 46.68.095(5);

(j) For distribution to the motor vehicle fund to be allocated to counties as provided in RCW 46.68.120, an amount as provided in RCW 46.68.095(6);

(k) For expenditure for highway purposes of the state as defined in RCW 46.68.130, an amount as provided in RCW 82.36.025(4) and 46.68.095(7);

(l) From July 1, 1994, through June 30, 1995, for distribution to the gasohol exemption holding account, hereby created in the motor vehicle fund, an amount equal to five and thirty-four one-hundredths of one percent of the amount available prior to distributions provided under (a) through (k) of this subsection, to be used only for highway construction.

(2) The amount accruing to the motor vehicle fund by virtue of the motor vehicle fuel tax and the special fuel tax and remaining after payments, distributions, and expenditures as provided in this section shall, for the purposes of this chapter, be referred to as the "net tax amount."

NEW SECTION. Sec. 3. (1) If a court enters a final order invalidating or remanding section 1 of this act on the grounds that it does not comply with section 13, chapter 2, Laws of 1994, it is the intent of the legislature that this measure be submitted to the people for their adoption, ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof.

(2) If a court remands this act for a vote of the people, the ballot title shall be substantially as follows: "Shall the alcohol fuel tax exemption given to fuel distributors be eliminated?"

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 May 1, 1994.

Passed the House March 8, 1994.

Passed the Senate March 8, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 226

[Engrossed House Bill 2347]

WINDOWS, DOORS, SKYLIGHTS—THERMAL TRANSMITTANCE RATING STANDARDS

AN ACT Relating to thermal transmittance rating standards for fenestration products; amending RCW 19.27A.020; and declaring an emergency.

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

Sec. 1. RCW 19.27A.020 and 1990 c 2 s 3 are each amended to read as follows:

(1) No later than January 1, 1991, the state building code council shall promulgate rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to promulgate rules to be known as the Washington state energy code. The Washington state energy code shall be designed to require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework. The Washington state energy code shall be designed to allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall require:

(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Double glazed windows with values not more than U-0.4;

(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and

(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.

(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;

(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the state energy office, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and

(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.

(c) ~~((For log built homes with space heat other than electric resistance, the building code council shall establish equivalent thermal performance standards consistent with the standards and maximum glazing areas of (b) of this subsection:))~~ The requirements of (b)(ii) of this subsection do not apply to residences with log or solid timber walls with a minimum average thickness of three and one-half inches and with space heat other than electric resistance.

(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.

(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. ~~((U-values for glazing are the tested values for thermal transmittance due to conduction resulting from either the American architectural manufacturers' association (AAMA) 1503.1 test procedure or the American society for testing materials (ASTM) C236 or C976 test procedures. Testing shall be conducted under established winter horizontal heat flow test conditions using the fifteen miles per hour wind speed perpendicular to the exterior surface of the glazing as specified under AAMA 1503.1 and product sample sizes specified under AAMA 1503.1. The AAMA 1503.1 testing must be conducted by an AAMA certified testing laboratory. The ASTM C236 or C976 testing U-values include any tested values resulting from a future revised AAMA 1503.1 test procedure:))~~ U-values for vertical glazing shall be determined, certified, and labeled in accordance with the appropriate national fenestration rating council (NFRC) standard, as determined and adopted by the state building code council. Certification of U-values shall be conducted by a certified, independent agency licensed by the NFRC. The state building code council may develop and adopt alternative methods of determining, certifying, and labeling U-values for vertical glazing that may be used by fenestration manufacturers if determined to be appropriate by the council. The state building code council shall review and consider the adoption of the NFRC standards for determining, certifying, and labeling U-values for doors and skylights when developed and published by the NFRC. The state building code council may develop and adopt appropriate alternative methods for determining, certifying, and labeling U-values for doors and skylights. U-values for doors and skylights determined, certified, and labeled in accordance with the appropriate NFRC standard shall be acceptable for compliance with the state energy code. Sealed insulation glass, where used, shall conform to, or be in the process of being tested for, ASTM E-774-81 ((level)) class A or better. ((The state building code

~~council shall maintain a list of the tested U-values for glazing products available in the state.))~~

(6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended.

(7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(8) The state building code council shall consult with the state energy office as provided in RCW 34.05.310 prior to publication of proposed rules. The state energy office shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section. The director of the state energy office shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(9) The state building code council shall conduct a study of county and city enforcement of energy codes in the state. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations, and to the extent possible, hold these meetings in conjunction with adopting rules under this section. The study shall include recommendations as to how code enforcement may be improved. The findings of the study shall be submitted in a report to the legislature no later than January 1, 1991.

(10) If any electric utility providing electric service to customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and such utility is unable to obtain from that agency at least fifty percent of the funds for payments required by RCW 19.27A.035, the amendments to this section by chapter 2, Laws of 1990 shall be null and void, and the 1986 state energy code shall be in effect, except that a city, town, or county may enforce a local energy code with more stringent energy requirements adopted prior to March 1, 1990. This subsection shall expire June 30, 1995.

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 9, 1994.
Passed the Senate March 9, 1994.
Approved by the Governor April 1, 1994.
Filed in Office of Secretary of State April 1, 1994.

CHAPTER 227

[Substitute House Bill 2412]

RENTAL CAR BUSINESSES—REGULATION REVISIONS

AN ACT Relating to rental car businesses; amending RCW 46.87.023 and 82.44.023; and repealing RCW 46.16.0101.

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

NEW SECTION. Sec. 1. RCW 46.16.0101 and 1992 c 194 s 6 are each repealed.

Sec. 2. RCW 46.87.023 and 1992 c 194 s 7 are each amended to read as follows:

(1) Rental car businesses must register with the department of licensing. This registration must be renewed annually by the rental car business.

(2) ~~((Rental car businesses must obtain a certificate of ownership and indicate that the vehicle is a rental car. Registration must be obtained for all rental cars and shall be valid for the period in which the rental car is part of an authorized business up to a maximum of twelve months))~~ Rental cars must be titled and registered under the provisions of chapters 46.12 and 46.16 RCW. The vehicle must be identified at the time of application with the rental car company business number issued by the department.

(3) ~~((In addition to all other fees prescribed for the registration of vehicles under chapter 46.16 RCW, the department shall collect a fee of five dollars per registration for the administration of the program and a vehicle transaction fee as authorized in RCW 46.87.130 to be deposited to the motor vehicle fund.~~

~~(4))~~ Use of rental cars is restricted to the rental customer unless otherwise provided by rule.

~~((5) The department will issue rental car license plates to businesses authorized under this section. A rental car business shall pay a fee of ten dollars for each set of rental car license plates as defined in RCW 46.87.090. Rental cars no longer eligible for use of the rental plates will be considered unlicensed vehicles and must be registered and pay the required motor vehicle excise taxes and registration fees prior to operation on public roads of this state.~~

~~(6) The department may authorize rental car businesses to issue temporary authorization permits as defined in RCW 46.87.080.~~

~~(7))~~ (4) The department may suspend or cancel the exemptions, benefits, or privileges granted under this section to ~~((any person or))~~ a rental car business ~~((firm who))~~ that violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. The department

may initiate and conduct audits, investigations, and enforcement actions as may be reasonably necessary for administering this section.

~~((8) Except as provided in this section or by rule adopted pursuant to this section, the transfer or use of the rental plates is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a special license plate has not been used in conformance with this section will confiscate the license plates and return them to the department for nullification along with full details of the reasons for confiscation.~~

~~(9))~~ (5) The department shall adopt such rules as may be necessary to administer and enforce the provisions of this section.

Sec. 3. RCW 82.44.023 and 1992 c 194 s 8 are each amended to read as follows:

Rental cars as defined in RCW 46.04.465 are exempt from the taxes imposed in RCW 82.44.020 (1) and (2). When a rental car ceases to be used for rental car purposes and at the time of its retail sale, the excise tax imposed in RCW 82.44.020 (1) and (2) shall be imposed in an amount equal to one-twelfth of the annual excise tax then in effect, for each full month remaining in the vehicle's registration year.

Passed the House February 8, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 228

[Substitute House Bill 2424]

MASSAGE PRACTITIONERS—STANDARD INDUSTRIAL CLASSIFICATION

AN ACT Relating to taxation of massage services; adding a new section to chapter 18.108 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.108 RCW to read as follows:

For the purposes of this chapter, licensed massage practitioners shall be classified as "offices and clinics of health practitioners, not elsewhere classified" under section 8049 of the standard industrial classification manual published by the executive office of the president, office of management and budget.

**NEW SECTION. Sec. 2. The department of revenue shall review the impact of section 1 of this act on massage practitioners and on revenue collection and report to the legislature by December 1, 1994, as to the effect of recategorizing massage practitioners as health practitioners and adjusting tax categories accordingly.*

*Sec. 2 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1994.

Passed the House February 15, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor April 1, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

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

"I am returning herewith, without my approval as to section 2, Substitute House Bill No. 2424 entitled:

"AN ACT Relating to taxation of massage services;"

This bill relates to re-categorizing massage practitioners as health practitioners and adjusting their tax categories.

Section 2 of this bill directs the Department of Revenue to report to the Legislature by December 1, 1994, on the effect of re-categorizing massage practitioners as health practitioners and adjusting tax categories accordingly.

However, a change in standard industrial classification does not affect the tax status or tax liability of massage practitioners, nor will it affect their licensing and certification requirements administered by the Department of Licensing. Such coding in the Department of Revenue and other agencies is for statistical purposes only. Tax liability and licensing requirements are determined by the kind of activity that the business actually performs. Substitute House Bill No. 2424 does not change the activity of massage practitioners and, therefore, will not change their tax liability.

Because section 1 does not change the tax liability or licensing/certification requirements of massage practitioners, the purpose of the review called for in section 2 becomes meaningless. For these reasons, I am vetoing section 2.

To address the concerns raised by the supporters of this bill, I am directing the Department of Revenue to meet with the prime sponsor and proponents of this legislation and discuss exactly what would be needed to accomplish their objectives.

With the exception of section 2, Substitute House Bill No. 2424 is approved."

CHAPTER 229

[House Bill 2478]

TIMBER—PURCHASER OF PRIVATELY OWNED TIMBER—REPORTING

AN ACT Relating to reporting sales of timber stumpage and logs; adding a new section to chapter 84.33 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 84.33 RCW to read as follows:

(1) A purchaser of privately owned timber in an amount in excess of two hundred thousand board feet in a voluntary sale made in the ordinary course of business shall, on or before the last day of the month following the purchase of the timber, report the particulars of the purchase to the department.

(2) The report required in subsection (1) of this section shall contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name and address, sale date, termination date in sale agreement, total sale price, total acreage involved in the sale, net volume of timber purchased, legal description of the area involved in the sale, road construction or improvements required or completed, timber cruise

data, and timber thinning data. A report may be submitted in any reasonable form or, at the purchaser's option, by submitting relevant excerpts of the timber sales contract. A purchaser may comply by submitting the information in the following form:

- Purchaser's name:
- Purchaser's address:
- Sale date:
- Termination date:.....
- Total sale price:
- Total acreage involved:
- Net volume of timber purchased:
- Legal description of sale area:
- Property improvements:
- Timber cruise data:
- Timber thinning data:

(3) A purchaser of privately owned timber involved in a purchase described in subsection (1) of this section who fails to report a purchase as required may be liable for a penalty of two hundred fifty dollars for each failure to report, as determined by the department.

(4) This section shall expire March 1, 1997.

Passed the House March 9, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 230

[Substitute House Bill 2488]

**CHILD SUPPORT ENFORCEMENT PROVISIONS REVISED—PATERNITY
DETERMINATION**

AN ACT Relating to child support enforcement operations; amending RCW 26.09.105, 26.09.120, 26.18.070, 26.18.100, 26.18.110, 26.18.140, 26.18.170, 26.23.045, 26.23.050, 26.23.060, 26.23.100, 26.26.040, 26.26.100, 26.26.150, 26.26.165, 74.20A.056, 74.20A.240, and 74.20A.300; reenacting and amending RCW 26.23.120 and 74.20A.080; adding a new section to chapter 26.26 RCW; adding a new section to chapter 74.20 RCW; and prescribing penalties.

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

Sec. 1. RCW 26.09.105 and 1989 c 416 s 1 are each amended to read as follows:

(1) In entering or modifying a support order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage except as provided in subsection (2) of this section, for any child named in the order if:

(a) Coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related; and

(b) The cost of such coverage does not exceed twenty-five percent of the obligated parent's basic child support obligation.

(2) The court shall consider the best interests of the child and have discretion to order health insurance coverage when entering or modifying a support order under this chapter if the cost of such coverage exceeds twenty-five percent of the obligated parent's basic support obligation.

(3) The parents shall maintain such coverage required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

(4) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(5) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

(6) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order ~~((, or within twenty days of the date such coverage becomes available,))~~ to:

(a) The physical custodian; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(7) Every order requiring a parent to provide health care or insurance coverage shall be entered in compliance with RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

(8) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

Sec. 2. RCW 26.09.120 and 1989 c 360 s 11 are each amended to read as follows:

(1) The court shall order support payments, including spousal maintenance if child support is ordered, to be made to the Washington state support registry, or the person entitled to receive the payments under an ~~((alternate payment plan))~~ order approved by the court as provided in RCW 26.23.050.

(2) Maintenance payments, when ordered in an action where there is no dependent child, may be ordered to be paid to the person entitled to receive the

payments, or the clerk of the court as trustee for remittance to the persons entitled to receive the payments.

(3) If support or maintenance payments are made to the clerk of court, the clerk:

(a) Shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order;

(b) May by local court rule accept only certified funds or cash as payment; and

(c) Shall accept only certified funds or cash for five years in all cases after one check has been returned for nonsufficient funds or account closure.

(4) The parties affected by the order shall inform the registry through which the payments are ordered to be paid of any change of address or of other conditions that may affect the administration of the order.

Sec. 3. RCW 26.18.070 and 1993 c 426 s 6 are each amended to read as follows:

(1) A petition or motion seeking a mandatory wage assignment in an action under RCW 26.18.040 may be filed by an obligee if the obligor is:

(a) Subject to a support order allowing immediate income withholding; or

(b) More than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the obligation payable for one month.

(2) The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the wage assignment order, including:

(a) That the obligor, stating his or her name and residence, is:

(i) Subject to a support order allowing immediate income withholding; or

(ii) More than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the obligation payable for one month;

(b) A description of the terms of the order requiring payment of support or spousal maintenance, and the amount past due, if any;

(c) The name and address of the obligor's employer;

(d) That notice by personal service or any form of mail requiring a return receipt, has been provided to the obligor at least fifteen days prior to the obligee seeking a mandatory wage assignment, unless the order for support or maintenance states that the obligee may seek a mandatory wage assignment without notice to the obligor; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source and, if the obligee has received public assistance, that the department of social and health services has been notified in writing of the pending action.

~~((2))~~ (3) If the court in which a mandatory wage assignment is sought does not already have a copy of the support or maintenance order in the court file,

then the obligee shall attach a copy of the support or maintenance order to the petition or motion seeking the wage assignment.

Sec. 4. RCW 26.18.100 and 1993 c 426 s 8 are each amended to read as follows:

The wage assignment order shall be substantially in the following form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

Obligee vs. Obligor
Employer
THE STATE OF WASHINGTON TO:
Employer
AND TO:
Obligor

The above-named obligee claims that the above-named obligor is subject to a support order requiring immediate income withholding or is more than fifteen days past due in either child support or spousal maintenance payments, or both, in an amount equal to or greater than the child support or spousal maintenance payable for one month. The amount of the accrued child support or spousal maintenance debt as of this date is dollars, the amount of arrearage payments specified in the support or spousal maintenance order (if applicable) is dollars per, and the amount of the current and continuing support or spousal maintenance obligation under the order is dollars per

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the Washington state support registry, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this wage assignment order upon you.

If you possess any earnings or other remuneration for employment due and owing to the obligor, then you shall do as follows:

- (1) Withhold from the obligor's earnings or remuneration each month, or from each regular earnings disbursement, the lesser of:
(a) The sum of the accrued support or spousal maintenance debt and the current support or spousal maintenance obligation;
(b) The sum of the specified arrearage payment amount and the current support or spousal maintenance obligation; or

(c) Fifty percent of the disposable earnings or remuneration of the obligor.

(2) The total amount withheld above is subject to the wage assignment order, and all other sums may be disbursed to the obligor.

(3) Upon receipt of this wage assignment order you shall make immediate deductions from the obligor's earnings or remuneration and remit to the Washington state support registry or other address specified below the proper amounts at each regular pay interval.

You shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

(a) The court that the wage assignment has been modified or terminated; or

(b) The ~~((Washington state support registry, office of support enforcement))~~ addressee specified in the wage assignment order under this section that the accrued child support or spousal maintenance debt has been paid ~~((+ or~~

~~(e) The court that has entered an order delaying, modifying, or terminating the wage assignment order and has approved an alternate payment plan as provided in RCW 26.23.050(2))).~~

You shall promptly notify the court and the ~~((Washington state support registry))~~ addressee specified in the wage assignment order under this section if and when the employee is no longer employed by you, or if the obligor no longer receives earnings or remuneration from you. If you no longer employ the employee, the wage assignment order shall remain in effect for one year after the employee has left your employment or you are no longer in possession of any earnings or remuneration owed to the employee, whichever is later. You shall continue to hold the wage assignment order during that period. If the employee returns to your employment during the one-year period you shall immediately begin to withhold the employee's earnings according to the terms of the wage assignment order. If the employee has not returned to your employment within one year, the wage assignment will cease to have effect at the expiration of the one-year period, unless you still owe the employee earnings or other remuneration.

You shall deliver the withheld earnings or remuneration to the Washington state support registry or other address stated below at each regular pay interval.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This wage assignment order has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support or spousal maintenance, or order to withhold or deliver under chapter 74.20A RCW.

WHETHER OR NOT YOU OWE ANYTHING TO THE OBLIGOR,
YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU
LIABLE FOR OBLIGOR'S CLAIMED SUPPORT OR SPOUSAL
MAINTENANCE DEBT TO THE OBLIGEE OR SUBJECT TO
CONTEMPT OF COURT.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS WAGE ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE WAGE ASSIGNMENT ORDER.

DATED THIS day of, 19. . .

..... Judge/Court Commissioner
Obligee,
or obligee's attorney
Send withheld payments to:

Sec. 5. RCW 26.18.110 and 1993 c 426 s 9 are each amended to read as follows:

(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 obligor is employed by or receives earnings or other remuneration from the employer, whether the employer will honor the wage assignment order, and whether there are either multiple child support or spousal maintenance attachments, or both, against the obligor.

(2) If the employer possesses any earnings or remuneration due and owing to the obligor, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The withheld earnings shall be delivered to the Washington state support registry or, if the wage assignment order is to satisfy a duty of spousal maintenance, to the addressee specified in the assignment at each regular pay interval.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

- (a) The court that the wage assignment has been modified or terminated; or
(b) The Washington state support registry or obligee that the accrued child support or spousal maintenance debt has been paid, provided the wage assignment order contains the language set forth under RCW 26.18.100(3)(b). The employer shall promptly notify the ((Washington state support registry)) addressee specified in the assignment when the employee is no longer employed. If the employer no longer employs the employee, the wage assignment order shall remain in effect for one year after the employee has left the employment or the employer has been in possession of any earnings or remuneration owed to the employee, whichever is later. The employer shall continue to hold the wage assignment order during that period. If the employee returns to the employer's employment during the one-year period the employer shall immediately begin to withhold the employee's earnings or remuneration according to the terms of the wage assignment order. If the employee has not returned within one year, the wage assignment shall cease to have effect at the

expiration of the one-year period, unless the employer continues to owe remuneration for employment to the obligor(~~or~~

~~(c) The court that has entered an order delaying, modifying, or terminating the wage assignment order and has approved an alternate payment plan as provided in RCW 26.23.050(2)).~~

(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 RCW 26.18.090. The processing fee may not exceed (a) ten dollars for the first disbursement made by the employer to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the clerk.

(5) An order for wage assignment for support for a dependent child entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support, or order to withhold and deliver under chapter 74.20A RCW. An order for wage assignment for spousal maintenance entered under this chapter shall have priority over any other wage assignment or garnishment, except for a wage assignment, garnishment, or order to withhold and deliver under chapter 74.20A RCW for support of a dependent child, and except for another wage assignment or garnishment for spousal maintenance.

(6) An employer who fails to withhold earnings as required by a wage assignment issued under this chapter may be held liable to the obligee for one hundred percent of the support or spousal maintenance debt, or the amount of support or spousal maintenance moneys that should have been withheld from the employee's earnings whichever is the lesser amount, if the employer:

- (a) Fails or refuses, after being served with a wage assignment order, to deduct and promptly remit from the unpaid earnings the amounts of money required in the order;
- (b) Fails or refuses to submit an answer to the notice of wage assignment after being served; or
- (c) Is unwilling to comply with the other requirements of this section.

Liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, and reasonable attorneys' fees.

(7) No employer who complies with a wage assignment issued under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment issued and executed under this chapter. If an employer discharges, disciplines, or refuses to hire an employee in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of damages suffered as a result of the violation and for costs and reasonable attorneys' fees, and shall be subject to a civil penalty of not more

than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

(9) For wage assignments payable to the Washington state support registry, an employer may combine amounts withheld from various employees into a single payment to the Washington state support registry, if the payment includes a listing of the amounts attributable to each employee and other information as required by the registry.

(10) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

Sec. 6. RCW 26.18.140 and 1993 c 426 s 11 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, 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. Satisfaction by the obligor 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 support or spousal maintenance obligation is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the wage assignment order should remain in effect.

(2) The court may enter an order delaying, modifying, or terminating the wage assignment order and order the obligor to make payments directly to the obligee (~~(if the court approves an alternate payment plan)~~) as provided in RCW 26.23.050(2).

Sec. 7. RCW 26.18.170 and 1993 c 426 s 14 are each amended to read as follows:

(1) Whenever an obligor parent who has been ordered to provide health insurance coverage for a dependent child fails to provide such coverage or lets it lapse, the department or the obligee may seek enforcement of the coverage order as provided under this section.

(2)(a) If the obligor parent's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage or proof that such coverage is unavailable may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the obligor, send a notice of enrollment to the obligor's employer or union by certified mail, return receipt requested.

The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(b) If the obligor parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(i) The obligee may, without further notice to the obligor send a certified copy of the order requiring health insurance coverage to the obligor's employer or union by certified mail, return receipt requested; and

(ii) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(3) Upon receipt of an order that provides for health insurance coverage, or a notice of enrollment:

(a) The obligor's employer or union shall answer the party who sent the order or notice within thirty-five days and confirm that the child:

(i) Has been enrolled in the health insurance plan;

(ii) Will be enrolled in the next open enrollment period; or

(iii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the obligor's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or insurer and the extent of coverage available to the obligee or the department and shall make available any necessary claim forms or enrollment membership cards.

(4) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage or proof that such coverage is unavailable may result in direct enforcement of the order, the department or the obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, ~~((or within twenty days of coverage becoming available))~~ the department or the obligee may proceed to enforce the order directly as provided in subsection (2) of this section.

(5) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the obligee may serve a written notice of intent to purchase health insurance coverage on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(6) If the department serves a notice under subsection (5) of this section the obligor shall, within twenty days of the date of service:

(a) File an application for an adjudicative proceeding; or

(b) Provide written proof to the department that the obligor has either applied for, or obtained, coverage accessible to the child.

(7) If the obligee serves a notice under subsection (5) of this section, within twenty days of the date of service the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(8) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may purchase the health insurance coverage specified in the notice directly. The amount of the monthly premium shall be added to the support debt and be collectible without further notice. The amount of the monthly premium may be collected or accrued until the obligor provides proof of the required coverage.

(9) The signature of the obligee or of a department employee shall be a valid authorization to the coverage provider or insurer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the obligee or to the child's health services provider, and in any claim against the coverage provider or insurer, the obligee or the obligee's assignee shall be subrogated to the rights of the obligor. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the obligee at the obligee's last known address within thirty days of the termination date.

(10) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in superior court at any time to enforce, modify, or clarify the original support order.

(11) Nothing in this section shall be construed to require a health maintenance organization, or health care service contractor, to extend coverage to a child who resides outside its service area.

(12) If an obligor fails to pay his or her portion of any deductible required under the health insurance coverage or fails to pay his or her portion of medical expenses incurred in excess of the coverage provided under the plan, the department or the obligee may enforce collection of the obligor's portion of the deductible or the additional medical expenses through a wage assignment order. The amount of the deductible or additional medical expenses shall be added to the support debt and be collectible without further notice if the obligor's share

of the amount of the deductible or additional expenses is reduced to a sum certain in a court order.

Sec. 8. RCW 26.23.045 and 1989 c 360 s 33 are each amended to read as follows:

(1) The office of support enforcement, Washington state support registry, shall provide support enforcement services under the following circumstances:

- (a) Whenever public assistance under RCW 74.20.330 is paid;
- (b) Whenever a request for nonassistance support enforcement services under RCW 74.20.040(2) is received;
- (c) Whenever a request for support enforcement services under RCW 74.20.040(3) is received;
- (d) When a support order which contains language directing a responsible parent to make support payments to the Washington state support registry under RCW 26.23.050 is submitted;

(e) When a support order is forwarded to the Washington state support registry by the clerk of a superior court under RCW 26.23.050(5);

(f) When the obligor submits a support order or support payment to the Washington state support registry.

(2) The office of support enforcement shall continue to provide support enforcement services for so long as and under such conditions as the department shall establish by regulation or until the superior court enters an order (~~approving an alternate payment plan~~) removing the requirement that the obligor make support payments to the Washington state support registry as provided for in RCW 26.23.050(~~((+))~~)(2).

Sec. 9. RCW 26.23.050 and 1993 c 207 s 1 are each amended to read as follows:

(1) (~~Except as provided in subsection (2) of this section, the superior court shall include in all superior court orders which establish or modify a support obligation:~~

~~(a) A provision which orders and directs that the responsible parent make all support payments to the Washington state support registry;~~

~~(b) A statement that a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 RCW or chapter 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:~~

~~(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or~~

~~(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and~~

~~(c) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.~~

~~(2) The court may order the responsible parent to make payments directly to the person entitled to receive the payments or, for orders entered on or after~~

~~July 1, 1990, direct that the issuance of a notice of payroll deduction or other income withholding actions be delayed until a support payment is past due if the court approves an alternate payment plan. The parties to the order must agree to such a plan and the plan must contain reasonable assurances that payments will be made in a regular and timely manner. The court may approve such a plan and modify or terminate the payroll deduction or other income withholding action at the time of entry of the order or at a later date upon motion and agreement of the parties. If the order directs payment to the person entitled to receive the payments instead of to the Washington state support registry, the order shall include a statement that the order may be submitted to the registry if a support payment is past due. If the order directs delayed issuance of the notice of payroll deduction or other income withholding action, the order shall include a statement that such action may be taken, without further notice, at any time after a support payment is past due. The provisions of this subsection do not apply if the department is providing public assistance under Title 74 RCW.)~~ If the office of support enforcement is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that a notice of payroll deduction may be issued, or other income withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(c) A statement that the receiving parent might be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that a notice of payroll deduction may be issued, or other income-withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the office of support enforcement provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the office of support enforcement's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that a notice of payroll deduction may be issued, or other income withholding action taken without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that a notice of payroll deduction may be issued if a support payment is past due or at any time after the entry of the order, the office of support enforcement may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) ~~((That payment shall be made to the Washington state support registry or in accordance with the alternate payment plan approved by the court))~~ The address where the support payment is to be sent;

(b) That a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 ~~((RCW))~~ or ~~((chapter))~~ 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of an order by the court, unless:

(i) ~~((The court approves an alternate payment plan under subsection (2) of this section;~~

~~((ii)))~~ One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

~~((((iii)))~~ (ii) The parties reach ~~((an alternate))~~ a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The social security number, residence address, and name and address of the employer of the responsible parent;

(g) The social security number and residence address of the physical custodian except as provided in subsection (6) of this section;

(h) The names, dates of birth, and social security numbers, if any, of the dependent children;

(i) In cases requiring payment to the Washington state support registry, that the parties are to notify the Washington state support registry of any change in residence address. The responsible parent shall notify the registry of the name and address of his or her current employer, whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(j) That any parent owing a duty of child support shall be obligated to provide health insurance coverage for his or her child if coverage that can be

extended to cover the child is or becomes available to that parent through employment or is union-related as provided under RCW 26.09.105;

(k) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the obligee or the department may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under chapter 26.18 RCW; and

(l) The reasons for not ordering health insurance coverage if the order fails to require such coverage.

(6) The physical custodian's address;

(a) Shall be omitted from an order entered under the administrative procedure act. When the physical custodian's address is omitted from an order, the order shall state that the custodian's address is known to the office of support enforcement.

(b) A responsible parent ((whose support obligation has been determined by such administrative order)) may request the physical custodian's residence address by submission of a request for disclosure under RCW 26.23.120 to the office of support enforcement.

(7) The superior court clerk, the office of administrative hearings, and the department of social and health services shall, within five days of entry, forward to the Washington state support registry, a true and correct copy of all superior court orders or administrative orders establishing or modifying a support obligation which provide that support payments shall be made to the support registry. If a superior court order entered prior to January 1, 1988, directs the responsible parent to make support payments to the clerk, the clerk shall send a true and correct copy of the support order and the payment record to the registry for enforcement action when the clerk identifies that a payment is more than fifteen days past due. The office of support enforcement shall reimburse the clerk for the reasonable costs of copying and sending copies of court orders to the registry at the reimbursement rate provided in Title IV-D of the social security act.

(8) Receipt of a support order by the registry or other action under this section on behalf of a person or persons who have not made a written application for support enforcement services to the office of support enforcement and who are not recipients of public assistance is deemed to be a request for ((support enforcement)) payment services ((under RCW 74.20.040 to the fullest extent permitted under federal law)) only.

(9) After the responsible parent has been ordered or notified to make payments to the Washington state support registry ((in accordance with subsection (1), (3), or (4) of)) under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income withholding action. The responsible parent shall not be entitled to credit against a support

obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

~~((10) As used in this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate income withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.))~~

Sec. 10. RCW 26.23.060 and 1991 c 367 s 40 are each amended to read as follows:

(1) The office of support enforcement may issue a notice of payroll deduction:

(a) As authorized by a support order that contains the income withholding notice provisions in RCW 26.23.050 or a substantially similar notice; or

(b) After service of a notice containing an income withholding provision under this chapter or chapter 74.20A RCW.

(2) The office of support enforcement shall serve a notice of payroll deduction upon a responsible parent's employer or upon the employment security department for the state in possession of or owing any benefits from the unemployment compensation fund to the responsible parent pursuant to Title 50 RCW by personal service or by any form of mail requiring a return receipt.

(3) Service of a notice of payroll deduction upon an employer or employment security department requires the employer or employment security department to immediately make a mandatory payroll deduction from the responsible parent's unpaid disposable earnings or unemployment compensation benefits. The employer or employment security department shall thereafter deduct each pay period the amount stated in the notice divided by the number of pay periods per month. The payroll deduction each pay period shall not exceed fifty percent of the responsible parent's disposable earnings.

(4) A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process.

(5) The notice of payroll deduction shall be in writing and include:

(a) The name and social security number of the responsible parent;

(b) The amount to be deducted from the responsible parent's disposable earnings each month, or alternate amounts and frequencies as may be necessary to facilitate processing of the payroll deduction;

(c) A statement that the total amount withheld shall not exceed fifty percent of the responsible parent's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(6) An informational copy of the notice of payroll deduction shall be mailed to the last known address of the responsible parent by regular mail.

(7) An employer or employment security department that receives a notice of payroll deduction shall make immediate deductions from the responsible parent's unpaid disposable earnings and remit proper amounts to the Washington state support registry on each date the responsible parent is due to be paid.

(8) An employer, or the employment security department, upon whom a notice of payroll deduction is served, shall make an answer to the office of support enforcement within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the responsible parent is employed by or receives earnings from the employer or receives unemployment compensation benefits from the employment security department, whether the employer or employment security department anticipates paying earnings or ~~((employment {unemployment}))~~ unemployment compensation benefits and the amount of earnings. If the responsible parent is no longer employed, or receiving earnings from the employer, the answer shall state the present employer's name and address, if known. If the responsible parent is no longer receiving unemployment compensation benefits from the employment security department, the answer shall state the present employer's name and address, if known.

(9) The employer or employment security department may deduct a processing fee from the remainder of the responsible parent's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for the first disbursement made to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the registry.

(10) The notice of payroll deduction shall remain in effect until released by the office of support enforcement, the court enters an order terminating the notice and approving an alternate ~~((payment-plan))~~ arrangement under RCW 26.23.050(2), or one year has expired since the employer has employed the responsible parent or has been in possession of or owing any earnings to the responsible parent or the employment security department has been in possession of or owing any unemployment compensation benefits to the responsible parent.

Sec. 11. RCW 26.23.100 and 1991 c 367 s 42 are each amended to read as follows:

(1) The responsible parent subject to a payroll deduction pursuant to this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction.

(2) Except as provided in subsections (4) and (5) of this section, the court may grant relief only upon a showing: (a) That the payroll deduction causes extreme hardship or substantial injustice; or (b) that the support payment was not past due under the terms of the order when the notice of payroll deduction was served on the employer.

(3) Satisfaction by the obligor of all past due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction.

(4) If a notice of payroll deduction has been in operation for twelve consecutive months and the obligor's support obligation is current, upon motion of the obligor, the court may order the office of support enforcement to terminate the payroll deduction, unless the obligee can show good cause as to why the payroll deduction should remain in effect.

(5) Subsection (2) of this section shall not prevent the court from ordering an alternative ~~((payment plan))~~ arrangement as provided under RCW 26.23.050(2).

Sec. 12. RCW 26.23.120 and 1989 c 360 s 17 and 1989 c 175 s 78 are each reenacted and 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 subsection (2) of 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 federally recognized tribes, law enforcement agencies, prosecuting agencies, and the executive branch, if the ~~((records or information are needed))~~ disclosure is necessary for child support enforcement purposes;

(d) To the parties in a judicial or adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons, federally recognized tribes, or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to ~~((a court order for support))~~ an action for purposes relating to ~~((the establishment, enforcement, or modification of the))~~ a child support 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 the physical custodian's address under subsection ~~((H))~~ (2)(f) of this section, a notice shall be mailed, if appropriate under the circumstances, to the physical custodian at the physical custodian's last known address. The notice shall advise the physical custodian 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 physical custodian or the child, or the custodial parent requests a hearing to contest the disclosure. The administrative law judge shall determine whether the address of the custodial parent should be disclosed based on the same standard as a claim of "good cause" as defined in 42 U.S.C. Sec. 602 (a)(26)(c).

(4) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260~~((5))~~(6). 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.

NEW SECTION. Sec. 13. A new section is added to chapter 26.26 RCW to read as follows:

In any action brought under this chapter, if the requirements of civil rule 55 are met, the superior court shall enter an order of default.

Sec. 14. RCW 26.26.040 and 1990 c 175 s 2 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:

(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

(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;

(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

(i) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics,

(ii) With his consent, he is named as the child's father on the child's birth certificate, or

(iii) He is obligated to support the child under a written voluntary promise or by court order;

(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;

(e) He acknowledges his paternity of the child pursuant to RCW 70.58.080 or in a writing filed with the state office of vital statistics, which shall promptly inform the mother of the filing of the acknowledgment, 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. 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; ((e))

(f) The United States immigration and naturalization service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or

(g) Genetic testing indicates a ninety-eight percent or greater probability of paternity.

(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.

Sec. 15. RCW 26.26.100 and 1984 c 260 s 32 are each amended to read as follows:

(1) The court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests or genetic tests of blood, tissues, or other bodily fluids. If an alleged father objects to a proposed order requiring him to submit to paternity blood or genetic tests, the court may require the party making the allegation of possible paternity

to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The court shall order blood or genetic tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood or genetic testing appointed by the court. The expert's verified report identifying the blood or genetic characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood or genetic samples tested is admissible to establish the chain of custody. The court may consider published sources as aids to interpretation of the test results.

(2)(a) Any objection to genetic testing results must be made in writing and served upon the opposing party, within twenty days before any hearing at which such results may be introduced into evidence.

(b) If an objection is not made as provided in this subsection, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(3) The court, upon request by a party, shall order that additional blood or genetic tests be performed by the same or other experts qualified in paternity blood or genetic testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood or genetic test results. The court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

~~((3))~~ (4) In all cases, the court shall determine the number and qualifications of the experts.

Sec. 16. RCW 26.26.150 and 1987 c 435 s 28 are each amended to read as follows:

(1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the state of Washington, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court shall order support payments to be made to the Washington state support registry, or the person entitled to receive the payments under an alternate ~~((payment plan))~~ arrangement approved by the court as provided in RCW 26.23.050(2).

(3) All remedies for the enforcement of judgments apply.

Sec. 17. RCW 26.26.165 and 1989 c 416 s 4 are each amended to read as follows:

(1) In entering or modifying a support order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health costs, or insurance premiums which are in addition to and not inconsistent with this section. "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order ~~(, or within twenty days of the date such coverage becomes available,)~~ to:

(a) The physical custodian; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

NEW SECTION. **Sec. 18.** A new section is added to chapter 74.20 RCW to read as follows:

When the department appears or participates in an adjudicative proceeding under chapter 26.23 or 74.20A RCW it shall:

(1) Act in furtherance of the state's financial interest in the matter;

(2) Act in the best interests of the children of the state;

(3) Facilitate the resolution of the controversy; and

(4) Make independent recommendations to ensure the integrity and proper application of the law and process.

In the proceedings the department does not act on behalf or as an agent or representative of an individual.

Sec. 19. RCW 74.20A.056 and 1989 c 55 s 3 are each amended 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 or certification of birth record information advising of the existence of a filed affidavit, provided by the center for health statistics, 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))~~ alleged father is later found not to be ~~((the father))~~ a responsible parent.

(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. 20. RCW 74.20A.080 and 1989 c 360 s 10 and 1989 c 175 s 154 are each reenacted and amended to read as follows:

(1) The secretary may issue to any person, firm, corporation, association, political subdivision, ~~((or))~~ department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become 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, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) When a support payment is past due, if a responsible parent's support order:

(i) Contains language directing the parent to make support payments to the Washington state support registry; and

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided for in RCW 26.23.050(1);

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount of the support debt accrued;

(b) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(c) Be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested.

(3) Any person, firm, corporation, association, political subdivision, ~~((or))~~ department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) 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; and

(b) Provide further and additional answers when requested by the secretary.

(4) Any such person, firm, corporation, association, political subdivision, ~~((or))~~ department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department of social and health services shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Deliver the property to the secretary as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the ~~((obligee within ten days of))~~ secretary on the date earnings are payable to the debtor;

(iv) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(5) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the office of support enforcement;

(b) Terminated by court order; or

(c) The person or entity receiving the order to withhold and deliver does not possess property of or owe money to the debtor for any period of twelve consecutive months following the date of service of the order to withhold and deliver.

(6) 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, or agency, subdivision, or

instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

~~((6))~~ (7) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

~~((7))~~ ~~The state warrants and represents that:~~

~~(a) It shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter; and~~

~~(b) It shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter))~~ (8) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

~~((8))~~ (9) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

~~((9))~~ (10) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

~~((10))~~ (11) 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 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.

~~((11))~~ (12) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment ~~((or))~~ garnishment, attachment, or other legal process, except for another wage assignment, garnishment, attachment, or other legal process for child support.

~~((12))~~ (13) The office of support enforcement shall notify any person, firm, corporation, association, or political subdivision, ~~((or))~~ department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they 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. 21. RCW 74.20A.240 and 1985 c 276 s 12 are each amended to read as follows:

Any person, firm, corporation, association, political subdivision ~~((or))~~, department of the state, or agency, subdivision, or instrumentality of the United States employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment ~~((, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings))~~. A person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the assignment of earnings under this chapter is not civilly liable to the debtor for complying with the assignment of earnings under this chapter. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment ~~((or))~~, garnishment, attachment, or other legal process except for another wage assignment ~~((or))~~, garnishment, attachment, or other legal process for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings.

Sec. 22. RCW 74.20A.300 and 1989 c 416 s 6 are each amended to read as follows:

(1) Whenever a support order is entered or modified under this chapter, the department shall require the responsible parent to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable to the

department within twenty days of the entry of the order (~~(-or within fifteen days of the date such coverage becomes available)).~~

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

Passed the House March 9, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 231

[House Bill 2511]

ALCOHOLISM AND DRUG ADDICTION—INVOLUNTARY TREATMENT—CITIZENS ADVISORY COUNCIL MEMBERSHIP TO REFLECT SERVICE RECIPIENTS

AN ACT Relating to involuntary treatment; amending RCW 70.96A.020 and 70.96A.070; and declaring an emergency.

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

Sec. 1. RCW 70.96A.020 and 1991 c 364 s 8 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(7) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described

in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and ~~((constitutes a danger))~~ presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(14) "Incompetent person" means a person who has been adjudged - incompetent by the superior court.

(15) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(16) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington.

(17) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

(18) "Minor" means a person less than eighteen years of age.

~~((18))~~ (19) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

~~((19))~~ (20) "Person" means an individual, including a minor.

~~((20))~~ (21) "Secretary" means the secretary of the department of social and health services.

~~((21))~~ (22) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

~~((22))~~ (23) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

Sec. 2. RCW 70.96A.070 and 1989 c 270 s 9 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))~~. It is the intent of the legislature that the citizens advisory council broadly represent citizens who have been recipients of voluntary or involuntary treatment for alcoholism or other drug addiction and who have been in recovery from chemical dependency for a minimum of two years. To meet this intent, at least two-thirds of the council's members shall be former recipients of these services and not employed in an occupation relating to alcoholism or 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 for the implementation of the chemical dependency program of the department. Rules and policies governing treatment programs shall be developed in collaboration among the council, department staff, local government, and administrators of voluntary and involuntary treatment programs. The secretary shall thereafter adopt such rules that, in his or her judgment properly implement the chemical dependency program of the department consistent with the welfare of those to be served, the legislative intent, and the public good.

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 6, 1994.

Passed the Senate March 2, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 232

[Engrossed Substitute House Bill 2521]

METALS MINING—GOLD MINING—OPERATIONS REGULATION

AN ACT Relating to metals mining and milling operations; amending RCW 90.03.350, 90.48.090, 78.44.161, 78.44.087, and 78.44.131; adding a new section to chapter 70.94 RCW; adding a new section to chapter 70.105 RCW; adding a new section to chapter 43.21C RCW; adding a new chapter to Title 78 RCW; creating new sections; 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. It is in the best interests of the citizens of the state of Washington to insure the highest degree of environmental protection while allowing the proper development and use of its natural resources, including its mineral resources. Metals mining can have significant positive and adverse impacts on the state and on local communities. The purpose of this chapter is to assure that metals mineral mining or milling operations are designed, constructed, and operated in a manner that promotes both economic opportunities and environmental and public health safeguards for the citizens of the state. It is the intent of the legislature to create a regulatory framework which yields, to the greatest extent possible, a metals mining industry that is compatible with these policies.

NEW SECTION. Sec. 2. The definitions set forth in this section apply throughout this chapter.

(1) "Metals mining and milling operation" means a mining operation extracting from the earth precious or base metal ore and processing the ore by treatment or concentration in a milling facility. It also refers to an expansion of an existing operation or any new metals mining operation if the expansion or new mining operation is likely to result in a significant, adverse environmental impact pursuant to the provisions of chapter 43.21C RCW. The extraction of dolomite, sand, gravel, aggregate, limestone, magnesite, silica rock, and zeolite or other nonmetallic minerals; and placer mining; and the smelting of aluminum are not metals mining and milling operations regulated under this chapter.

(2) "Milling" means the process of grinding or crushing ore and extracting the base or precious metal by chemical solution, electro winning, or flotation processes.

(3) "Heap leach extraction process" means the process of extracting base or precious metal ore by percolating solutions through ore in an open system and includes reprocessing of previously milled ore. The heap leach extraction process does not include leaching in a vat or tank.

(4) "In situ extraction" means the process of dissolving base or precious metals from their natural place in the geological setting and retrieving the solutions from which metals can be recovered.

(5) "Regulated substances" means any materials regulated under a waste discharge permit pursuant to the requirements of chapter 90.48 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

(6) "To mitigate" means: (a) To avoid the adverse impact altogether by not taking a certain action or parts of an action; (b) to minimize adverse impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; (c) to rectify adverse impacts by repairing, rehabilitating, or restoring the affected environment; (d) to reduce or eliminate adverse impacts over time by preservation and maintenance operations during the life of the action; (e) to compensate for the impact by replacing, enhancing, or providing substitute resources or environments; or (f) to monitor the adverse impact and take appropriate corrective measures.

NEW SECTION. Sec. 3. Metals mining and milling operations are subject to the requirements of this chapter in addition to the requirements established in other statutes and rules.

NEW SECTION. Sec. 4. The department of ecology shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ecology. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

NEW SECTION. Sec. 5. (1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ecology shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ecology, after consultation with the department of fish and wildlife, shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the department of ecology's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ecology shall cooperate with all affected local governments to the fullest extent practicable.

NEW SECTION. Sec. 6. The department of ecology will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

NEW SECTION. Sec. 7. (1) State agencies with the responsibility for inspecting metals mining and milling operations regulated under this chapter shall conduct such inspections at least quarterly: PROVIDED, That the inspections are not prevented by inclement weather conditions.

(2) The legislature encourages state agencies with inspection responsibilities for metals mining and milling operations regulated under this chapter to explore opportunities for cross-training of inspectors among state agencies and programs. This cross-training would be for the purpose of meeting the inspection responsibilities of these agencies in a more efficient and cost-effective manner. If doing so would be more efficient and cost-effective, state agency inspectors are also encouraged to coordinate inspections with federal and local government inspectors as well as with one another.

NEW SECTION. Sec. 8. (1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation.

Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by section 7 of this act and (b) the metals mining coordinator established in section 6 of this act.

(2) (a) As part of its normal budget development process and in consultation with the metals mining industry, the department of ecology shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter . . . , Laws of 1994 (this act). The department shall also estimate the cost of employing the metals mining coordinator established in section 6 of this act.

(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter . . . , Laws of 1994 (this act).

(3) Based on the cost estimates generated by the department of ecology and the department of natural resources, the department of revenue shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the agency responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department of revenue may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet agencies' inspection responsibilities.

(4) The department of revenue shall collect the fees established in subsection (3) of this section. Chapter 82.32 RCW, insofar as applicable, applies to the fees imposed under this section. All moneys paid to the department of revenue from these fees shall be deposited into the metals mining account.

(5) This section shall take effect July 1, 1995, unless the legislature adopts an alternative approach based on the recommendations of the metals mining advisory group established in section 27 of this act.

NEW SECTION. Sec. 9. (1) In the processing of an application for an initial waste discharge permit for a tailings facility pursuant to the requirements of chapter 90.48 RCW, the department of ecology shall consider site-specific criteria in determining a preferred location of tailings facilities of metals mining and milling operations and incorporate the requirements of all known available and reasonable methods in order to maintain the highest possible standards to insure the purity of all waters of the state in accordance with the public policy identified by RCW 90.48.010.

In implementing the siting criteria, the department shall take into account the objectives of the proponent's application relating to mining and milling operations. These objectives shall consist of, but not be limited to (a) operational feasibility, (b) compatibility with optimum tailings placement methods, (c)

adequate volume capacity, (d) availability of construction materials, and (e) an optimized embankment volume.

(2) To meet the mandate of subsection (1) of this section, siting of tailings facilities shall be accomplished through a two-stage process that consists of a primary alternatives screening phase, and a secondary technical site investigation phase.

(3) The primary screening phase will consist of, but not be limited to, siting criteria based on considerations as to location as follows:

(a) Proximity to the one hundred year flood plain, as indicated in the most recent federal emergency management agency maps;

(b) Proximity to surface and ground water;

(c) Topographic setting;

(d) Identifiable adverse geologic conditions, such as landslides and active faults; and

(e) Visibility impacts of the public generally and residents more particularly.

(4) The department of ecology, through the primary screening process, shall reduce the available tailings facility sites to one or more feasible locations whereupon a technical site investigation phase shall be conducted by the department for the purpose of verifying the adequacy of the remaining potential sites. The technical site investigations phase shall consist of, but not be limited to, the following:

(a) Soil characteristics;

(b) Hydrologic characteristics;

(c) A local and structural geology evaluation, including seismic conditions and related geotechnical investigations;

(d) A surface water control analysis; and

(e) A slope stability analysis.

(5) Upon completion of the two phase evaluation process set forth in this section, the department of ecology shall issue a site selection report on the preferred location. This report shall address the above criteria as well as analyze the feasibility of reclamation and stabilization of the tailings facility. The siting report may recommend mitigation or engineering factors to address siting concerns. The report shall be developed in conjunction with the preparation of and contained in an environmental impact statement prepared pursuant to chapter 43.21C RCW. The report may be utilized by the department of ecology for the purpose of providing information related to the suitability of the site and for ruling on an application for a waste discharge permit.

(6) The department of ecology may, at its discretion, require the applicant to provide the information required in either phase one or phase two as described in subsections (3) and (4) of this section.

NEW SECTION. Sec. 10. (1) In order to receive a waste discharge permit from the department of ecology pursuant to the requirements of chapter 90.48 RCW or in order to operate a metals mining and milling tailing facility, an

applicant proposing a metals mining and milling operation regulated under this chapter must meet the following additional requirements:

(a) Any tailings facility shall be designed and operated to prevent the release of pollution and must meet the following standards:

(i) Operators shall apply all known available and reasonable technology to limit the concentration of potentially toxic materials in the tailings facility to assure the protection of wildlife and human health;

(ii) The tailings facility shall have a containment system that includes an engineered liner system, leak detection and leak collection elements, and a seepage collection impoundment to assure that a leak of any regulated substance under chapter 90.48 RCW will be detected before escaping from the containment system. The design and management of the facility must ensure that any leaks from the tailings facility are detected in a manner which allows for remediation pursuant to chapter 90.48 RCW. The applicant shall prepare a detailed engineering report setting forth the facility design and construction. The applicant shall submit the report to the department of ecology for its review and approval of a design as determined by the department. Natural conditions, such as depth to ground water or net rainfall, shall be taken into account in the facility design, but not in lieu of the protection required by the engineered liner system;

(iii) The toxicity of mine or mill tailings and the potential for long-term release of regulated substances from mine or mill tailings shall be reduced to the greatest extent practicable through stabilization, removal, or reuse of the substances; and

(iv) The closure of the tailings facility shall provide for isolation or containment of potentially toxic materials and shall be designed to prevent future release of regulated substances contained in the impoundment;

(b) The applicant must develop a waste rock management plan approved by the department of ecology and the department of natural resources which emphasizes pollution prevention. At a minimum, the plan must contain the following elements:

(i) An accurate identification of the acid generating properties of the waste rock;

(ii) A strategy for encapsulating potentially toxic material from the environment, when appropriate, in order to prevent the release of heavy metals and acidic drainage; and

(iii) A plan for reclaiming and closing waste rock sites which minimizes infiltration of precipitation and runoff into the waste rock and which is designed to prevent future releases of regulated substances contained within the waste rock;

(c) If an interested citizen or citizen group so requests of the department of ecology, the metals mining and milling operator or applicant shall work with the department of ecology and the interested party to make arrangements for citizen observation and verification in the taking of required water samples. While it is the intent of this subsection to provide for citizen observation and verification of

water sampling activities, it is not the intent of this subsection to require additional water sampling and analysis on the part of the mining and milling operation or the department. The citizen observation and verification program shall be incorporated into the applicant's, operator's, or department's normal sampling regimen and shall occur at least once every six months. There is no duty of care on the part of the state or its employees to any person who participates in the citizen observation and verification of water sampling under chapter . . . , Laws of 1994 (this act) and the state and its employees shall be immune from any civil lawsuit based on any injuries to or claims made by any person as a result of that person's participation in such observation and verification of water sampling activities. The metals mining and milling operator or applicant shall not be liable for any injuries to or claims made by any person which result from that person coming onto the property of the metals mining and milling operator or applicant as an observer pursuant to chapter . . . , Laws of 1994 (this act). The results from these and all other relevant water sampling activities shall be kept on file with the relevant county and shall be available for public inspection during normal working hours; and

(d) An operator or applicant for a metals mining and milling operation must complete a voluntary reduction plan in accordance with RCW 70.95C.200.

(2) Only those tailings facilities constructed after the effective date of this section must meet the requirement established in subsection (1)(a) of this section. Only those waste rock holdings constructed after the effective date of this section must meet the requirement established in subsection (1)(b) of this section.

NEW SECTION. **Sec. 11.** (1) The department of ecology and the department of natural resources shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to both agencies based on the requirements of subsection (2) of this section. This performance security may be:

- (a) Bank letters of credit acceptable to both agencies;
- (b) A cash deposit;
- (c) Negotiable securities acceptable to both agencies;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank; or
- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW and acceptable to both agencies.

The agencies may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

- (a) Compliance with the laws of the state of Washington pertaining to metals mining and milling operations and with the related rules and permit conditions established by state and local government with respect to those operations as

defined in RCW 78.44.031(17) and the construction, operation, reclamation, and closure of a metals mining and milling operation;

(b) Postclosure environmental monitoring as determined by the department of ecology and the department of natural resources; and

(c) Provision of sufficient funding for cleanup of potential problems revealed during or after closure.

(3) The department of ecology and the department of natural resources shall jointly adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology and the department of natural resources, acting jointly, may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the agencies shall jointly review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology and the department of natural resources. Liability under the performance security may be released only upon written notification by the department of ecology, with the concurrence of the department of natural resources.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology and the department of natural resources. At such time, the interest shall be remitted to the operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by either agency to comply with the obligations.

NEW SECTION. Sec. 12. The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to chapter . . . , Laws of 1994 (this act). If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security to remediate or mitigate adverse impacts.

The department shall keep a record of all expenses incurred in carrying out any remediation or mitigation activities authorized under this section, including:

- (1) Remediation or mitigation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to remediation or mitigation.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section.

If the department of natural resources finds that reclamation has not occurred according to the standards required under chapter 78.44 RCW in a metals mining and milling operation, then the department of natural resources may cause reclamation to occur pursuant to RCW 78.44.240. Upon approval of the department of ecology, the department of natural resources may reclaim part or all of the metals mining and milling operation using that portion of the surety posted pursuant to chapter . . . , Laws of 1994 (this act) that has been identified for reclamation.

NEW SECTION. Sec. 13. (1) The legislature finds that the construction and operation of large-scale metals mining and milling facilities may create new job opportunities and enhance local tax revenues. However, the legislature also finds that such operations may also result in new demands on public facilities owned and operated by local government entities, such as public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. It is important for these economic impacts to be identified as part of any proposal for a large-scale metals mining and milling operation. It is then appropriate for the county legislative authority to balance expected revenues, including revenues derived from taxes paid by the owner of such an operation, and costs associated with the operation to determine to what degree any new costs require mitigation by the metals mining applicant.

(2) An applicant for a large-scale metals mining and milling operation regulated under this chapter must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local governmental units. For the purposes of this section, a metals mining operation is large-scale if, in the construction or operation of the mine and the associated milling facility, the applicant and contractors at the site employ more than thirty-five persons during any consecutive six-month period. The relevant county is the county in which the mine and mill are to be sited, unless the economic impacts to local governmental units are projected to

substantially affect more than one county. In that case, the impact plan must be submitted to the legislative authority of all affected counties. Local governmental units include counties, cities, towns, school districts, and special purpose districts.

(3) The economic impact analysis shall include at least the following information:

(a) A timetable for development of the mining operation, including the opening date of the operation and the estimated closing date;

(b) The estimated number of persons coming into the impacted area as a result of the development of the mining operation;

(c) An estimate of the increased capital and operating costs to local governmental units for providing services necessary as a result of the development of the mining operation; and

(d) An estimate of the increased tax or other revenues accruing to local governmental units as a result of development of the mining and milling operation.

(4) The county legislative authority of a county planning under chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(5) The county legislative authority of a county which is not planning under chapter 36.70A RCW may negotiate with the applicant on a strategy to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(6) The county legislative authority must approve or disapprove the impact analysis and any associated proposals from the applicant to address economic impacts to local governmental units resulting from development of the mining operation. If the applicant does not submit an adequate impact analysis to the relevant county legislative authority or if the county legislative authority does not find the applicant's proposals to be acceptable because of their failure to adequately mitigate adverse economic impacts, the county legislative authority shall refuse to issue any permits under its jurisdiction necessary for the construction or operation of the mine and associated mill.

(7) The requirements established in this section apply to metals mining operations under construction or constructed after the effective date of this section.

(8) The provisions of chapter 82.02 RCW shall apply to new mining and milling operations.

NEW SECTION. Sec. 14. (1) Except as provided in subsections (2) and (5) of this section, any aggrieved person may commence a civil action on his or her own behalf:

(a) Against any person, including any state agency or local government agency, who is alleged to be in violation of a law, rule, order, or permit pertaining to metals mining and milling operations regulated under chapter . . . , Laws of 1994 (this act);

(b) Against a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty under state laws pertaining to metals mining and milling operations; or

(c) Against any person who constructs a metals mining and milling operation without the permits and authorizations required by state law.

The superior courts shall have jurisdiction to enforce metals mining laws, rules, orders, and permit conditions, or to order the state to perform such act or duty, as the case may be. In addition to injunctive relief, a superior court may award a civil penalty when deemed appropriate in an amount not to exceed ten thousand dollars per violation per day, payable to the state of Washington.

(2) No action may be commenced:

(a) Under subsection (1)(a) of this section:

(i) Prior to sixty days after the plaintiff has given notice of the alleged violation to the state, and to any alleged violator of a metals mining and milling law, rule, order, or permit condition; or

(ii) If the state has commenced and is diligently prosecuting a civil action in a court of the state or of the United States or is diligently pursuing authorized administrative enforcement action to require compliance with the law, rule, order, or permit. To preclude a civil action, the enforcement action must contain specific, aggressive, and enforceable timelines for compliance and must provide for public notice of and reasonable opportunity for public comment on the enforcement action. In any such court action, any aggrieved person may intervene as a matter of right; or

(b) Under subsection (1)(b) of this section prior to sixty days after the plaintiff has given notice of such action to the state.

(3)(a) Any action respecting a violation of a law, rule, order, or permit condition pertaining to metals mining and milling operations may be brought in the judicial district in which such operation is located or proposed.

(b) In such action under this section, the state, if not a party, may intervene as a matter of right.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, wherever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

(5) A civil action to enforce compliance with a law, rule, order, or permit may not be brought under this section if any other statute, or the common law, provides authority for the plaintiff to bring a civil action and, in such action, obtain the same relief, as authorized under this section, for enforcement of such

law, rule, order, or permit. Nothing in this section restricts any right which any person, or class of persons, may have under any statute or common law to seek any relief, including relief against the state or a state agency.

NEW SECTION. Sec. 15. A milling facility which is not adjacent to or in the vicinity of the metals mining operation producing the ore to be milled and which processes precious or base metal ore by treatment or concentration is subject to the provisions of sections 1 through 9, 10(1) (a), (c) and (d), 11 through 14, 18, and 19 of this act and chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable laws. The smelting of aluminum does not constitute a metals milling operation under this section.

NEW SECTION. Sec. 16. (1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources and the department of ecology shall jointly review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment and shall report their findings to the legislature by December 30, 1994.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

NEW SECTION. Sec. 17. The department of ecology will work with the metals mining industry and relevant federal, state, and local governmental agencies to identify areas of regulatory overlap among regulators of mining and milling operations. The department will also identify possible solutions for eliminating or reducing regulatory overlap. The department will report back to the legislature on its findings and possible solutions by January 1, 1995.

NEW SECTION. Sec. 18. A new section is added to chapter 70.94 RCW to read as follows:

If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining and milling operation in order to ensure compliance with this chapter.

NEW SECTION. Sec. 19. A new section is added to chapter 70.105 RCW to read as follows:

If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining operation in order to ensure compliance with this chapter.

Sec. 20. RCW 90.03.350 and 1987 c 109 s 91 are each amended to read as follows:

Any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he or she is requested to do so by the department.

A metals mining and milling operation regulated under chapter . . . , Laws of 1994 (this act) is subject to additional dam safety inspection requirements due to the special hazards associated with failure of a tailings pond impoundment. The department shall inspect these impoundments at least quarterly during the project's operation and at least annually thereafter for the postclosure monitoring period in order to ensure the safety of the dam or controlling works. The department shall conduct additional inspections as needed during the construction phase of the mining operation in order to ensure the safe construction of the tailings impoundment.

Sec. 21. RCW 90.48.090 and 1987 c 109 s 127 are each amended to read as follows:

The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter . . . , Laws of 1994 (this act). The department shall inspect these mining and milling operations at least quarterly in order to ensure compliance with the intent and any permit issued pursuant to this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with this chapter.

Sec. 22. RCW 78.44.161 and 1993 c 518 s 25 are each amended to read as follows:

The department may order at any time an inspection of the disturbed area to determine if the miner or permit holder has complied with the reclamation permit, rules, and this chapter.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter . . . , Laws of 1994 (this act). The department shall inspect these mining operations at least quarterly, unless prevented by inclement weather conditions, in order to ensure that the permit holder is in compliance with the reclamation permit, rules, and this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with the reclamation permit, rules, and this chapter.

Sec. 23. RCW 78.44.087 and 1993 c 518 s 15 are each amended to read as follows:

The department shall not issue a reclamation permit until the applicant has deposited with the department an acceptable performance security on forms prescribed and furnished by the department. A public or governmental agency shall not be required to post performance security nor shall a permit holder be required to post surface mining performance security with more than one state(~~(-local, or federal))~~ or local agency.

This performance security may be:

- (1) Bank letters of credit acceptable to the department;
 - (2) A cash deposit;
 - (3) Negotiable securities acceptable to the department;
 - (4) An assignment of a savings account;
 - (5) A savings certificate in a Washington bank on an assignment form prescribed by the department;
 - (6) Assignments of interests in real property within the state of Washington;
- or
- (7) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules adopted under it.

The department shall have the authority to determine the amount of the performance security using a standardized performance security formula developed by the department. The amount of the security shall be determined by the department and based on the estimated costs of completing reclamation according to the approved reclamation plan or minimum standards and related administrative overhead for the area to be surface mined during (a) the next twelve-month period, (b) the following twenty-four months, and (c) any previously disturbed areas on which the reclamation has not been satisfactorily completed and approved.

The department may increase or decrease the amount of the performance security at any time to compensate for a change in the disturbed area, the depth of excavation, a modification of the reclamation plan, or any other alteration in the conditions of the mine that affects the cost of reclamation. The department may, for any reason, refuse any performance security not deemed adequate.

Liability under the performance security shall be maintained until reclamation is completed according to the approved reclamation plan to the satisfaction of the department unless released as hereinafter provided. Liability under the performance security may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute performance security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

Any interest or appreciation on the performance security shall be held by the department until reclamation is completed to its satisfaction. At such time, the interest shall be remitted to the permit holder; except that such interest or appreciation may be used by the department to effect reclamation in the event that the permit holder fails to comply with the provisions of this chapter and the costs of reclamation exceed the face value of the performance security.

Except as provided in this section, no other state agency or local government shall require performance security for the purposes of surface mine reclamation and only one agency of government shall require and hold the performance security. The department may enter into written agreements with federal agencies in order to avoid redundant bonding of surface mines straddling boundaries between federally controlled and other lands within Washington state.

~~((Notwithstanding any other provision of this section, nothing shall preclude the department of ecology from requiring a separate performance security for metallic minerals or uranium surface mines under any authority if any that may be presently vested in the department of ecology relating to such mines.))~~ The department and the department of ecology shall jointly require performance security for metals mining and milling operations regulated under chapter . . . , Laws of 1994 (this act).

Sec. 24. RCW 78.44.131 and 1993 c 518 s 20 are each amended to read as follows:

The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective of reclamation is to reestablish on a continuing basis the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use consistent with local land use plans for the surface mine site.

Each permit holder shall comply with the minimum reclamation standards in effect on the date the permit was issued and any additional reclamation standards set forth in the approved reclamation plan. The department may modify, on a site specific basis, the minimum reclamation standards for metals mining and milling operations regulated under chapter . . . , Laws of 1994 (this

act) in order to achieve the reclamation and closure objectives of that chapter. The basic objective of reclamation for these operations is the reestablishment on a continuing basis of vegetative cover, slope stability, water conditions, and safety conditions.

Reclamation activities, particularly those relating to control of erosion and mitigation of impacts of mining to adjacent areas, shall, to the extent feasible, be conducted simultaneously with surface mining, and in any case shall be initiated at the earliest possible time after completion of surface mining on any segment of the permit area.

All reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a reclamation permit is in force.

The department may by contract delegate enforcement of provisions of reclamation plans to counties, cities, and towns. A county, city, or town performing enforcement functions may not impose any additional fees on permit holders.

NEW SECTION. Sec. 25. A new section is added to chapter 43.21C RCW to read as follows:

Notwithstanding any provision in RCW 43.21C.030 and 43.21C.031 to the contrary, an environmental impact statement shall be prepared for any proposed metals mining and milling operation as required by section 5 of this act.

NEW SECTION. Sec. 26. Sections 1 through 16 of this act shall constitute a new chapter in Title 78 RCW.

NEW SECTION. Sec. 27. (1) The department of ecology shall establish a metals mining advisory group, to be comprised of members representing the metals mining industry, county commissioners of affected counties, the environmental community, the department of ecology, the department of fish and wildlife, and the department of natural resources.

(2) The metals mining advisory group will focus on the following tasks:

(a) A review of the adequacy of the cost-accounting methods of the departments of ecology and natural resources in accurately identifying the costs associated with the requirements established in this act;

(b) Establishing a set of success measures to be used to evaluate the implementation of the new coordinator role established in this act;

(c) Examination of possible new inspection requirements for the department of fish and wildlife and a means to fund any new requirements; and

(d) Identification and evaluation of the alternative bases for allocating the costs that may be necessitated by this act.

(3) The advisory group shall report its findings and its preferred alternative among the options identified in subsection (2)(d) of this section to the legislature by January 1, 1995.

NEW SECTION. Sec. 28. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1994, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 29. 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. 30. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and, with the exception of sections 6 through 8 and 18 through 22 of this act, shall take effect immediately.

NEW SECTION. Sec. 31. Sections 6 through 8 and 18 through 22 of this act shall take effect July 1, 1995.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 233

[House Bill 2583]

RECORDS—DOMESTIC VIOLENCE PROGRAMS—UNFAIR PRACTICE INVESTIGATIONS CONFIDENTIALITY

AN ACT Relating to disclosure of records; amending RCW 70.123.075; reenacting and amending RCW 42.17.310; and providing an effective date.

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

Sec. 1. RCW 70.123.075 and 1991 c 301 s 10 are each amended to read as follows:

(1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

~~((1))~~ **(a)** A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

~~((2))~~ **(b)** The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

~~((3))~~ **(c)** The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

~~((4))~~ **(d)** The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

(2) For purposes of this section "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims.

Sec. 2. RCW 42.17.310 and 1993 c 360 s 2, 1993 c 320 s 9, and 1993 c 280 s 35 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

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

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

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.163, 43.160, 43.330, 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) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

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

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

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying if the provider has provided the department with an accurate alternative or business address and telephone number.

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

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

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or

of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(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. 3. This act shall take effect July 1, 1994.

Passed the House March 5, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 234

[Engrossed Second Substitute House Bill 2605]

HIGHER EDUCATION—NONRESIDENT TUITION—EXCEPTIONAL FACULTY AWARD FUNDS TRANSFER—NATIONAL GUARD CONDITIONAL SCHOLARSHIP PROGRAM

AN ACT Relating to higher education; amending RCW 28B.15.725, 28B.50.839, and 28A.600.110; amending 1989 c 290 s 1 (uncodified); and adding a new chapter to Title 28B RCW.

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

Sec. 1. RCW 28B.15.725 and 1993 sp.s. c 18 s 26 are each amended to read as follows:

Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College may enter into undergraduate (~~upper division~~) student exchange agreements with (~~comparable public four-year~~) institutions of higher education of other states and agree to exempt participating undergraduate (~~upper division~~) students from

payment of all or a portion of the nonresident tuition fees differential subject to the following restrictions:

(1) In any given academic year, the number of students receiving a waiver at a state institution shall not exceed the number of that institution's 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 academic year.

Sec. 2. 1989 c 290 s 1 (uncodified) is amended to read as follows:

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.

Sec. 3. RCW 28B.50.839 and 1993 c 87 s 2 are each amended to read as follows:

(1) In consultation with eligible community and technical colleges, the college board shall set priorities and guidelines for the program.

(2) Under this section, a college shall not receive more than four faculty grants in twenty-five thousand dollar increments, with a maximum total of one hundred thousand dollars per campus in any biennium.

(3) All community and technical colleges and foundations shall be eligible for matching trust funds. Institutions and foundations may apply to the college board for grants from the fund in twenty-five thousand dollar increments up to a maximum of one hundred thousand dollars when they can match the state funds with equal cash donations from private sources, except that in the initial year of the program, no college or foundation may receive more than one grant until every college or its foundation has received one grant. These donations shall be made specifically to the exceptional faculty awards program and deposited by the institution or foundation in a local endowment fund or a foundation's fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution or foundation.

(4) Once sufficient private donations are received by the institution or foundation, the institution shall inform the college board and request state matching funds. The college board shall evaluate the request for state matching funds based on program priorities and guidelines. The college board may ask

the state treasurer to release the state matching funds to a local endowment fund established by the institution or a foundation's fund established by a foundation for each faculty award created.

(5) A college, by action of its board of trustees, may transfer those exceptional faculty award funds accumulated in its local endowment fund between July 1, 1991, and July 25, 1993, to its foundation's local endowment fund established as provided in subsection (3) of this section.

Sec. 4. RCW 28A.600.110 and 1988 c 210 s 4 are each amended to read as follows:

There is established by the legislature of the state of Washington the Washington state scholars program. The purposes of this program annually are to:

(1) Provide for the selection of three seniors residing in each legislative district in the state graduating from high schools (~~in each legislative district~~) who have distinguished themselves academically among their peers.

(2) Maximize public awareness of the academic achievement, leadership ability, and community contribution of Washington state public and private high school seniors through appropriate recognition ceremonies and events at both the local and state level.

(3) Provide a listing of the Washington scholars to all Washington state public and private colleges and universities to facilitate communication regarding academic programs and scholarship availability.

(4) Make available a state level mechanism for utilization of private funds for scholarship awards to outstanding high school seniors.

(5) Provide, on written request and with student permission, a listing of the Washington scholars to private scholarship selection committees for notification of scholarship availability.

(6) Permit a waiver of tuition and services and activities fees as provided for in RCW 28B.15.543 and grants under RCW 28B.80.245.

NEW SECTION. Sec. 5. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and sections 6 and 7 of this act.

(1) "Eligible student" means an enlisted member or an officer of the rank of captain or below in the Washington national guard who is a resident student as defined in RCW 28B.15.012 and 28B.15.013, who attends an institution of higher education that is located in this state and accredited by the Northwest Association of Schools and Colleges, and who meets any additional selection criteria adopted by the office.

(2) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a member of the Washington national guard under rules adopted by the office.

(3) "Forgiven" or "to forgive" or "forgiveness" means either to render service in the Washington national guard in lieu of monetary repayment, or to be relieved of the service obligation under rules adopted by the office.

(4) "Office" means the office of the adjutant general of the state military department.

(5) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

(6) "Service obligation" means serving in the Washington national guard for one additional year for each year of conditional scholarship received under this program.

NEW SECTION. Sec. 6. The Washington state national guard conditional scholarship program is established. The program shall be administered by the office. In administering the program, the powers and duties of the office shall include, but need not be limited to:

(1) The selection of eligible students to receive conditional scholarships;

(2) The award of conditional scholarships funded by federal and state funds, private donations, or repayments from any participant who does not complete the participant's service obligation. Use of state funds is subject to available funds. The annual amount of each conditional scholarship may vary, but shall not exceed the annual cost of undergraduate tuition fees and services and activities fees at the University of Washington, plus an allowance for books and supplies;

(3) The adoption of necessary rules and guidelines;

(4) The adoption of participant selection criteria. The criteria may include but need not be limited to requirements for: Satisfactory progress, minimum grade point averages, enrollment in courses or programs that lead to a baccalaureate degree or an associate degree or a certificate, and satisfactory participation as a member of the Washington national guard;

(5) The notification of participants of their additional service obligation or required repayment of the conditional scholarship; and

(6) The collection of repayments from participants who do not meet the eligibility criteria or service obligations.

NEW SECTION. Sec. 7. (1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they serve in the Washington national guard for one additional year for each year of conditional scholarship received, under rules adopted by the office.

(2) The entire principal and interest of each yearly repayment shall be forgiven for each additional year in which a participant serves in the Washington national guard, under rules adopted by the office.

(3) If a participant elects to repay the conditional scholarship, the period of repayment shall be four years, with payments accruing quarterly commencing nine months from the date that the participant leaves the Washington national guard or withdraws from the institution of higher education, whichever comes

first. The interest rate on the repayments shall be eight percent per year. Provisions for deferral and forgiveness shall be determined by the office.

(4) The office is responsible for collection of repayments made under this section. The office shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of law, including wage garnishment if necessary. The office is responsible to forgive all or parts of such repayments under the criteria established in this section, and shall maintain all necessary records of forgiven payments. The office may contract with the higher education coordinating board for collection of repayments under this section.

(5) Receipts from the payment of principal or interest paid by or on behalf of participants shall be deposited with the office and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (4) of this section. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

NEW SECTION. Sec. 8. Sections 5 through 7 of this act shall constitute a new chapter in Title 28B RCW.

Passed the House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 235

[Substitute House Bill 2627]

HOUSING FINANCE PROGRAM IMPLEMENTATION

AN ACT Relating to housing finance; and adding new sections to chapter 43.180 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.180 RCW to read as follows:

The commission, in cooperation with the department of community, trade, and economic development, and the state investment board, shall develop and implement a housing finance program that:

(1) Provides subsidized or unsubsidized mortgage financing for single-family home ownership, including a single condominium unit, located in the state of Washington;

(2) Requests the state investment board to make investments, within its policies and investment guidelines, in mortgage-backed securities that are collateralized by loans made within the state of Washington; and

(3) Provides flexible loan underwriting guidelines, including but not limited to provisions that will allow reduced downpayment requirements for the purchaser.

NEW SECTION. Sec. 2. A new section is added to chapter 43.180 RCW to read as follows:

The housing finance program developed under section 1 of this act shall:

(1) Be limited to borrowers with incomes that do not exceed one hundred fifteen percent of the state or county median family income, whichever is higher, adjusted for family size;

(2) Be limited to first-time home buyers as defined in RCW 43.185A.010;

(3) Be targeted so that priority is given to low-income households as defined in RCW 43.185A.010;

(4) To the extent funds are made available, provide either downpayment or closing costs assistance to households eligible for assistance under chapter 43.185A RCW and this chapter; and

(5) Provide notification to active participants of the state retirement systems managed by the department of retirement systems under chapter 41.50 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 43.180 RCW to read as follows:

(1) The commission shall submit to the legislature in its annual report a summary of the progress of the housing finance program developed under section 1 of this act. The report shall include, but not be limited to the number of loans made and location of property financed under sections 1 and 2 of this act.

(2) The commission shall take such steps as are necessary to ensure that sections 1 and 2 of this act are implemented on the effective date of this act.

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 House March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 236

[House Bill 2665]

LOW-DENSITY LIGHT AND POWER BUSINESSES—EXCISE TAXATION

AN ACT Relating to excise taxation of low-density light and power businesses; adding a new section to chapter 82.16 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.16 RCW to read as follows:

(1) In computing tax under this chapter, a light and power business may deduct from gross income the lesser of the amounts determined under subsections (2) through (4) of this section.

(2)(a) Twenty-five percent of wholesale power cost paid during the reporting period, if the light and power business has fewer than five and one-half customers per mile of line.

(b) Twenty percent of wholesale power cost paid during the reporting period, if the light and power business has more than five and one-half but less than eleven customers per mile.

(c) Fifteen percent of the wholesale power cost paid during the reporting period, if the light and power business has more than eleven but less than seventeen customers per mile of line.

(d) Zero if the light and power business has more than seventeen customers per mile of line.

(3) Wholesale power cost multiplied by the percentage by which the average retail electric power rates for the light and power business exceed the state average electric power rate. If more than fifty percent of the kilowatt hours sold by a light and power business are sold to irrigators, then only sales to nonirrigators shall be used to calculate the average electric power rate for that light and power business. For purposes of this subsection, the department shall determine state average electric power rate each year based on the most recent available data and shall inform taxpayers of its determination.

(4) Two hundred thousand dollars per month.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1994.

Passed the House February 26, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 237

[Engrossed Substitute House Bill 2688]

TRAVEL BUSINESSES REGULATED

AN ACT Relating to sellers of travel; amending RCW 19.138.010, 19.138.030, 19.138.040, and 19.138.050; adding new sections to chapter 19.138 RCW; creating new sections; repealing RCW 19.138.020, 19.138.060, 19.138.070, and 19.138.080; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 19.138.010 and 1986 c 283 s 1 are each amended to read as follows:

The legislature finds and declares that advertising, sales, and business practices of certain (~~travel charter or tour operators~~) sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its

people; that problems have arisen regarding certain (~~segments of the travel charter or tour operator business~~) sales of travel; and that the public welfare requires (~~regulation~~) registration of (~~travel charter or tour operators~~) sellers of travel in order to eliminate unfair advertising, sales and business practices. The legislature further finds it necessary to establish standards that will safeguard the people against financial hardship and to encourage fair dealing and prosperity in the travel business.

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 licensing.

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

(3) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers, including, but not limited to, travel agencies, who sell, provide, furnish contracts for, arrange, or advertise, either directly or indirectly, by any means or method, to arrange or book any travel services including travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation or hotel or other lodging accommodation and vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company as defined in RCW 84.12.200 whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection (3)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection (3)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with

"owning," "owned," and "ownership" referring to equity holdings of at least eighty percent.

(4) "Travel services" includes transportation by air, sea, or rail ground transportation, hotel or any lodging accommodations, or package tours, whether offered or sold on a wholesale or retail basis.

(5) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

NEW SECTION. Sec. 3. No person, firm, or corporation may act or hold itself out as a seller of travel unless, prior to engaging in the business of selling or advertising to sell travel services, the person, firm, or corporation registers with the director under this chapter and rules adopted under this chapter.

(1) The registration number must be conspicuously posted in the place of business and must be included in all advertisements. Any corporation which issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by such corporation including any wholly owned subsidiary of such corporation are not required to include company registration numbers in advertisements.

(2) The director shall issue duplicate registrations upon payment of a nominal duplicate registration fee to valid registration holders operating more than one office.

(3) No registration is assignable or transferable.

(4) If a registered seller of travel sells his or her business, when the new owner becomes responsible for the business, the new owner must comply with all provisions of this chapter, including registration.

NEW SECTION. Sec. 4. An application for registration as a seller of travel shall be submitted in the form prescribed by rule by the director, and shall contain but not be limited to the following:

(1) The name, address, and telephone number of the seller of travel;

(2) Proof that the seller of travel holds a valid business license in the state of its principal state of business;

(3) A registration fee in an amount determined under RCW 43.24.086;

(4) The name, address, and social security numbers of all employees who sell travel and are covered by the seller of travel's registration. This subsection shall not apply to the out-of-state employees of a corporation that issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by the corporation;

(5) A report prepared and signed by a licensed public accountant or certified public accountant or other report, approved by the director, that verifies that the seller of travel maintains a trust account or other approved account at a federally

insured institution located in the state of Washington, the location and number of that trust account or other approved account, and verifying that the account is maintained and used as required by section 8 of this act. The director, by rule, may permit alternatives to the report that provides for at least the same level of verification.

NEW SECTION. Sec. 5. (1) Each seller of travel shall renew its registration on or before July 1 of every other year or as otherwise determined by the director.

(2) Renewal of a registration is subject to the same provisions covering issuance, suspension, and revocation of a registration originally issued.

(3) The director may refuse to renew a registration for any of the grounds set out under section 6 of this act, and where the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry out the applicant's duties in accordance with law and with integrity and honesty. The director shall promptly notify the applicant in writing by certified mail of its intent to refuse to renew the registration. The registrant may, within twenty-one days after receipt of that notice or intent, request a hearing on the refusal. The director may permit the registrant to honor commitments already made to its customers, but no new commitments may be incurred, unless the director is satisfied that all new commitments are completely bonded or secured to insure that the general public is protected from loss of money paid to the registrant. It is the responsibility of the registrant to contest the decision regarding conditions imposed or registration denied through the process established by the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. Sec. 6. (1) The director may deny, suspend, or revoke the registration of a seller of travel if the director finds that the applicant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) Has been found guilty of a felony within the past five years involving moral turpitude, or of a misdemeanor concerning fraud or conversion, or suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) Has made a false statement of a material fact in an application under this chapter or in data attached to it;

(d) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter;

(e) Has failed to display the registration as provided in this chapter;

(f) Has published or circulated a statement with the intent to deceive, misrepresent, or mislead the public;

(g) Has committed a fraud or fraudulent practice in the operation and conduct of a travel agency business, including, but not limited to, intentionally misleading advertising; or

(h) Has aided or abetted a person, firm, or corporation that they know has not registered in this state in the business of conducting a travel agency or other sale of travel.

(2) If the seller of travel is found in violation of this chapter or in violation of the consumer protection act, chapter 19.86 RCW, by the entry of a judgment or by settlement of a claim, the director may revoke the registration of the seller of travel, and the director may reinstate the registration at the director's discretion.

****NEW SECTION. Sec. 7. The department, in cooperation with the travel industry and the office of the attorney general shall examine the establishment of a cost recovery fund, surety bond, or other requirement to indemnify industry consumers. The department shall report to the legislature by December 1, 1994, concerning legislation to establish one or all of these procedures.***

**Sec. 7 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 8. (1) Within five business days of receipt, a seller of travel shall deposit all sums received from a person or entity, for travel services offered by the seller of travel, in a trust account or other approved account maintained in a federally insured financial institution located in Washington state. Exempted are airline sales made by a seller of travel, when payments for the airline tickets are made through the airline reporting corporation either by cash or credit card sale.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

(a) Partial or full payment for travel services to the entity directly providing the travel service;

(b) Refunds as required by this chapter;

(c) The amount of the sales commission;

(d) Interest earned and credited to the trust account or other approved account; or

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided.

(3) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in section 4 of

this act. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(4) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(5) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

(a) The payment is made by credit card;

(b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(6) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section.

NEW SECTION. Sec. 9. A seller of travel shall perform its duties reasonably and with ordinary care in providing travel services.

Sec. 10. RCW 19.138.030 and 1986 c 283 s 3 are each amended to read as follows:

A ~~((travel charter or tour operator))~~ seller of travel shall not advertise that air, sea, or land transportation either separately or in conjunction with other services is or may be available unless he or she has, prior to ~~((such))~~ the advertisement, ~~((received written confirmation with a carrier for the transportation advertised))~~ determined that the product advertised was available at the time the advertising was placed. This determination can be made by the seller of travel either by use of an airline computer reservation system, or by written confirmation from the vendor whose program is being advertised.

It is the responsibility of the seller of travel to keep written or printed documentation of the steps taken to verify that the advertised offer was available at the time the advertising was placed. These records are to be maintained for at least two years after the placement of the advertisement.

Sec. 11. RCW 19.138.040 and 1986 c 283 s 4 are each amended to read as follows:

At or prior to the time of full or partial payment for air, sea, or land transportation or any other services offered by the seller of travel ~~((charter or tour operator))~~ in conjunction with ~~((such))~~ the transportation, the seller of travel

~~((charter or tour operator))~~ shall furnish to the person making the payment a written statement conspicuously setting forth the following information:

(1) The name and business address and telephone number of the ~~((travel charter or tour operator))~~ seller of travel.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The ~~((location and))~~ registration number of the ~~((trust account or bond))~~ seller of travel required by this chapter.

(4) The name of the ~~((carrier))~~ vendor with whom the ~~((travel charter or tour operator))~~ seller of travel has contracted to provide ~~((the transportation, the type of equipment contracted, and the date, time, and place of each departure: PROVIDED, That the information required in this subsection may be provided at the time of final payment))~~ travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.

(5) The conditions, if any, upon which the contract between the ~~((travel charter or tour operator))~~ seller of travel and the passenger may be canceled, and the rights and obligations of all parties in the event of ~~((such))~~ cancellation.

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the ~~((travel charter or tour operator))~~ seller of travel, all sums paid to the ~~((travel charter or tour operator))~~ seller of travel for services not performed in accordance with the contract between the ~~((travel charter or tour operator))~~ seller of travel and the ~~((passenger))~~ purchaser will be refunded within ~~((fourteen))~~ thirty days ~~((after the cancellation by the travel charter or tour operator to the passenger or the party who contracted for the passenger unless mutually acceptable alternative travel arrangements are provided))~~ of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be returned within fourteen days after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel to apply the money to another travel product and/or date."

Sec. 12. RCW 19.138.050 and 1986 c 283 s 5 are each amended to read as follows:

(1) If the transportation or other services contracted for are canceled ~~((the travel charter or tour operator)), or if the money is to be refunded for any reason,~~ the seller of travel shall ((return)) refund to the ((passenger within fourteen days after the cancellation all moneys paid for services not performed in accordance with the contract unless mutually acceptable alternative travel arrangements are provided)) person with whom it contracts for travel services, the money due the person within thirty days of receiving the funds from the vendor with whom the services were arranged. If the funds were not sent to the vendor and remain in

the possession of the seller of travel, the funds shall be refunded within fourteen days.

(2) Any material misrepresentation with regard to the transportation and other services offered shall be deemed to be a cancellation necessitating the refund required by this section.

(3) When travel services are paid to a vendor and charged to a consumer's credit card by the seller of travel, and the arrangements are subsequently canceled by the consumer, the vendor, or the seller of travel, any refunds to the consumer's credit card must be applied for within ten days from the date of cancellation.

(4) The seller of travel shall not be obligated to refund any cancellation penalties imposed by the vendor with whom the services were arranged if these penalties were disclosed in the statement required under RCW 19.138.040.

NEW SECTION. Sec. 13. The director has the following powers and duties:

(1) To adopt, amend, and repeal rules to carry out the purposes of this chapter;

(2) To issue and renew registrations under this chapter and to deny or refuse to renew for failure to comply with this chapter;

(3) To suspend or revoke a registration for a violation of this chapter;

(4) To establish fees;

(5) Upon receipt of a complaint, to inspect and audit the books and records of a seller of travel. The seller of travel shall immediately make available to the director those books and records as may be requested at the seller of travel's place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the seller of travel during regular business hours; and

(6) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter.

NEW SECTION. Sec. 14. (1) A nonresident seller of travel soliciting business or selling travel in the state of Washington, by mail, telephone, or otherwise, either directly or indirectly, is deemed, absent any other appointment, to have appointed the director to be the seller of travel's true and lawful attorney upon whom may be served any legal process against that nonresident arising or growing out of a transaction involving travel services. That solicitation signifies the nonresident's agreement that process against the nonresident that is served as provided in this chapter is of the same legal force and validity as if served personally on the nonresident seller of travel.

(2) Service of process upon a nonresident seller of travel shall be made by leaving a copy of the process with the director. The fee for the service of process shall be determined by the director by rule. That service is sufficient service upon the nonresident if the plaintiff or plaintiff's attorney of record sends notice of the service and a copy of the process by certified mail before service

or immediately after service to the defendant at the address given by the nonresident in a solicitation furnished by the nonresident, and the sender's post office receipt of sending and the plaintiff's or plaintiff's attorney's affidavit of compliance with this section are returned with the process in accordance with Washington superior court civil rules. Notwithstanding the foregoing requirements, however, once service has been made on the director as provided in this section, in the event of failure to comply with the requirement of notice to the nonresident, the court may order that notice be given that will be sufficient to apprise the nonresident.

NEW SECTION. Sec. 15. The director, in the director's discretion, may:

(1) Annually, or more frequently, make public or private investigations within or without this state as the director deems necessary to determine whether a registration should be granted, denied, revoked, or suspended, or whether a person has violated or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms of this chapter;

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter; and

(3) Investigate complaints concerning practices by sellers of travel for which registration is required by this chapter.

NEW SECTION. Sec. 16. For the purpose of an investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

NEW SECTION. Sec. 17. If it appears to the director that a person has engaged in an act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the director may, in the director's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of an opportunity for a hearing shall be given. The director may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice.

NEW SECTION. Sec. 18. The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin a person or entity selling travel services for which registration is required by this chapter without registration from engaging in the practice until the required registration is secured. However, the injunction shall not relieve the person or entity selling travel services without registration from criminal prosecution

therefor, but the remedy by injunction shall be in addition to any criminal liability.

NEW SECTION. Sec. 19. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, that shall be paid to the department. For the purpose of this section, the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

NEW SECTION. Sec. 20. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

NEW SECTION. Sec. 21. (1) The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The person or organization shall be afforded the opportunity for a hearing, upon request made to the director within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) 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.

(4) If a person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the director may recover the amount assessed by action in the appropriate superior court. In the action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

NEW SECTION. Sec. 22. The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, the full amount of restitution as may be necessary to restore to a person an interest in money or property, real or personal, that may have been acquired by means of an act prohibited by or in violation of this chapter.

NEW SECTION. Sec. 23. In order to maintain or defend a lawsuit, a seller of travel must be registered with the department as required by this chapter and rules adopted under this chapter.

NEW SECTION. Sec. 24. (1) Each person who knowingly violates this chapter or who knowingly gives false or incorrect information to the director, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) A person who violates this chapter or who gives false or incorrect information to the director, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 25. The administrative procedure act, chapter 34.05 RCW, shall, wherever applicable, govern the rights, remedies, and procedures respecting the administration of this chapter.

NEW SECTION. Sec. 26. All information, documents, and reports filed with the director under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation. The director may make public, on a periodic or other basis, the information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the director or any other matters to the administration and enforcement of this chapter.

NEW SECTION. Sec. 27. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

NEW SECTION. Sec. 28. 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. 29. The following acts or parts of acts are each repealed:

- (1) RCW 19.138.020 and 1986 c 283 s 2;
- (2) RCW 19.138.060 and 1986 c 283 s 6;
- (3) RCW 19.138.070 and 1986 c 283 s 7; and
- (4) RCW 19.138.080 and 1986 c 283 s 8.

NEW SECTION. Sec. 30. Any state funds appropriated to the department of licensing for implementation of chapter . . . , Laws of 1994 (this act) for the biennium ending June 30, 1995, shall be reimbursed by June 30, 1997, by an assessment of fees sufficient to cover all costs of implementing chapter . . . , Laws of 1994 (this act).

NEW SECTION. Sec. 31. A violation of RCW 19.138.030 through 19.138.070 shall constitute a violation of RCW 19.86.020.

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.** Sections 1 through 29 of this act shall take effect January 1, 1996.

NEW SECTION. **Sec. 34.** Sections 2 through 6, 8, 9, 13 through 28, 30, and 31 of this act are each added to chapter 19.138 RCW.

NEW SECTION. **Sec. 35.** The director of licensing, beginning July 1, 1995, may take such steps as are necessary to ensure that this act is implemented on its effective date.

Passed the House March 8, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

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

"I am returning herewith, without my approval as to section 7, Engrossed Substitute House Bill No. 2688 entitled:

"AN ACT Relating to sellers of travel;"

Section 7 requires the Department of Licensing to examine various alternatives to indemnify travel consumers and to report its findings to the Legislature by December 1, 1994. However, section 33 establishes an effective date for the bill of January 1, 1996, thereby defeating the possibility of completing the study within the time frame established in section 7. Although I am vetoing section 7, I am directing the Department of Licensing to conduct the study and to report to the Legislature prior to the start of the next Legislative Session.

With the exception of section 7, Engrossed Substitute House Bill No. 2688 is approved."

CHAPTER 238

[Engrossed Substitute House Bill 2737]

ECONOMIC DEVELOPMENT FINANCE AUTHORITY—NONRECOURSE REVENUE BONDS

AN ACT Relating to the Washington economic development finance authority; amending RCW 43.163.010, 43.163.080, 43.163.120, and 43.163.130; adding a new section to chapter 43.163 RCW; and declaring an emergency.

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

Sec. 1. RCW 43.163.010 and 1989 c 279 s 2 are each amended to read as follows:

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 RCW 43.163.020 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))~~ director of the department of financial institutions, 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) "Eligible person" means an individual, partnership, corporation, or joint venture carrying on business, or proposing to carry on business within the state and is seeking financial assistance under section 4 of this act;

(8) "Financial assistance" means the infusion of capital to persons for use in the development and exploitation of specific inventions and products;

(9) "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))~~ (10) "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 RCW 43.163.090(-);

(11) "Economic development activities" means activities related to: Manufacturing, processing, research, production, assembly, tooling, warehousing, pollution control, energy generating, conservation, transmission, and sports facilities and industrial parks;

(12) "Project costs" means costs of:

(a) Acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of land, rights to land, buildings, structures, docks, wharves, fixtures, machinery, equipment, excavations, paving, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities, and any other real or personal property included in an economic development activity;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of an activity included under subsection (11) of this section, including costs of studies assessing the feasibility of an economic development activity;

(c) Finance costs, including the costs of credit enhancement and discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any financing document;

(d) Start-up costs, working capital, capitalized research and development costs, capitalized interest during construction and during the eighteen months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this section;

(13) "Product" means a product, device, technique, or process that is or may be exploitable commercially. "Product" does not refer to pure research, but shall be construed to apply to products, devices, techniques, or processes that have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice;

(14) "Financing agreements" means, and includes without limitation, a contractual arrangement with an eligible person whereby the authority obtains rights from or in an invention or product or proceeds from an invention or product in exchange for the granting of financial and other assistance to the person.

Sec. 2. RCW 43.163.080 and 1990 c 53 s 5 are each amended to read as follows:

(1) 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.

(2) 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)~~ strict 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 RCW 43.163.090.

Sec. 3. RCW 43.163.120 and 1989 c 279 s 13 are each amended to read as follows:

The authority shall receive no appropriation of state funds. The department of community, 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 community, 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))~~ appropriate standing committees of the house of representatives and senate.

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.163 RCW to read as follows:

For the purpose of facilitating economic development in the state of Washington and encouraging the employment of Washington workers at meaningful wages:

(1) The authority may develop and conduct a program or programs to provide nonrecourse revenue bond financing for the project costs for no more than five economic development activities, per year, included under the authority's general plan of economic development finance objectives;

(2) The authority may also develop and conduct a program that will stimulate and encourage the development of new products within Washington state by the infusion of financial aid for invention and innovation in situations in which the financial aid would not otherwise be reasonably available from commercial sources. The authority is authorized to provide nonrecourse revenue bond financing for this program.

(a) For the purposes of this program, the authority shall have the following powers and duties:

(i) To enter into financing agreements with eligible persons doing business in Washington state, upon terms and on conditions consistent with the purposes of this chapter, for the advancement of financial and other assistance to the persons for the development of specific products, procedures, and techniques, to be developed and produced in this state, and to condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues shall remain in this state and accrue to it;

(ii) Own, possess, and take license in patents, copyrights, and proprietary processes and negotiate and enter into contracts and establish charges for the use of the patents, copyrights, and proprietary processes when the patents and licenses for products result from assistance provided by the authority;

(iii) Negotiate royalty payments to the authority on patents and licenses for products arising as a result of assistance provided by the authority;

(iv) Negotiate and enter into other types of contracts with eligible persons that assure that public benefits will result from the provision of services by the authority; provided that the contracts are consistent with the state Constitution;

(v) Encourage and provide technical assistance to eligible persons in the process of developing new products;

(vi) Refer eligible persons to researchers or laboratories for the purpose of testing and evaluating new products, processes, or innovations; and

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of a contractual right, payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program shall forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance shall be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial aid, including the state of development of the product as well as the likelihood of its commercial feasibility. After receipt and

consideration of the report set out in this subsection and after other action as is deemed appropriate, the application shall be approved or denied by the authority. The applicant shall be promptly notified of action by the authority. In making the decision as to approval or denial of an application, priority shall be given to those persons operating or planning to operate businesses of special importance to Washington's economy, including, but not limited to: (i) Existing resource-based industries of agriculture, forestry, and fisheries; (ii) existing advanced technology industries of electronics, computer and instrument manufacturing, computer software, and information and design; and (iii) emerging industries such as environmental technology, biotechnology, biomedical sciences, materials sciences, and optics.

(3) The authority may also develop and implement, if authorized by the legislature, such other economic development financing programs adopted in future general plans of economic development finance objectives developed under RCW 43.163.090.

(4) The authority may not issue any bonds for the programs authorized under this section after June 30, 2000.

Sec. 5. RCW 43.163.130 and 1989 c 279 s 14 are each amended to read as follows:

(1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds shall be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the state. The authority may

pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority shall create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 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.

(12) The authority may not issue any bonds after June 30, 2000.

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 March 9, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

CHAPTER 239

[Engrossed Substitute House Bill 2741]

WATERSHED COORDINATING COUNCIL ESTABLISHED

AN ACT Relating to coordinated, watershed-based natural resource planning; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Long-term sustainable and economically productive watersheds are necessary for the well-being of the citizens of the state of Washington. The legislature also finds that there is a need to develop consensus regarding the beneficial economic and natural values which watersheds provide. The legislature further finds that watershed units are the appropriate geographic planning and implementation element for addressing the health and economic productivity of the state's natural resources;

(2) The ongoing efforts of public agencies and private parties in watershed planning and its implementation are having a far-reaching effect on lands and

resources, and continued integrated and coordinated planning and its implementation is needed to achieve the most effective and efficient use of public funds;

(3) In times of decreasing revenues and increasing demands, it is critically important to ensure the efficient and effective use of scarce financial resources by avoiding overlap and duplication of effort among watershed-based planning and implementation efforts;

(4) The existing efforts implementing watershed-based planning are often complicated by multiple land ownerships, different management missions and objectives, different ways of collecting information, and legal constraints; and

(5) Many different entities, including federal, state, and local governments, tribes, private landowners, and other groups are conducting planning, research, implementation, and monitoring programs relating to watersheds. To the greatest extent possible, coordinated planning and its implementation should be based on these efforts.

NEW SECTION. Sec. 2. The purpose of this act and the intent of the legislature is:

(1) That sections 3 through 5 of this act do not grant any new rule-making authority nor direct any substantive changes to existing management policies established pursuant to law;

(2) To provide mechanisms to make comprehensive watershed planning and implementation policy recommendations for consideration by the legislature;

(3) To encourage coordination and integration of existing state agency and private party watershed planning and implementation; and

(4) To develop a set of measurable objectives against which the effectiveness of watershed programs may be assessed.

NEW SECTION. Sec. 3. (1) The watershed coordinating council is hereby established. The council shall be comprised of the commissioner of public lands or the commissioner's designee and the director or the director's designee or the secretary or the secretary's designee of the following agencies: The department of transportation, the department of agriculture, the department of ecology, the department of fish and wildlife, the department of health, the department of community, trade, and economic development, the interagency committee for outdoor recreation, the Puget Sound water quality authority, and the conservation commission. The members of the council shall coordinate their watershed planning and implementation activities. Meetings of the council shall be subject to the provisions of the open public meetings act.

(2) In conjunction with the council's efforts, the commissioner of public lands shall continue to coordinate the department of natural resources' landscape planning and implementation activities with landowners and other interested parties.

(3) The council shall coordinate its activities set forth in section 4 of this act with federal, tribal, and local governments.

(4) The directors of the departments of agriculture, fish and wildlife, and ecology and the commissioner of public lands shall organize meetings of the council and shall cooperatively ensure a reasonable level of staff support for the council and for the task force established in section 5 of this act.

(5) The watershed coordinating council shall expire on June 30, 1997.

NEW SECTION. Sec. 4. By December 15, 1994, the watershed coordinating council shall provide to the legislature a summary of all state agency watershed programs, plans, and ongoing activities on a watershed-by-watershed basis. The council shall also prepare a report of its recommendations for consideration by the legislature. The report of recommendations shall include:

(1) A recommended definition of the geographical unit for watershed planning and implementation processes, taking into account the relationships between smaller watersheds within larger watersheds and the relationships between adjacent watersheds;

(2) Recommendations for the establishment of common protocols governing data collection and analysis and for a central depository of information which could be used by all state agencies involved in watershed planning and implementation processes;

(3) Identification of data available from all existing sources regarding the condition of the state's watersheds;

(4) Identification of any barriers to state agency cooperation in watershed planning and implementation, and recommendations to overcome such barriers;

(5) Recommendations for minimizing duplication, segmentation, and overlap, and identification of proposals for improving efficiency in watershed planning and implementation; and

(6) Recommendations for new sources of funding and reallocation of existing state funding sources for watershed planning and implementation.

***NEW SECTION. Sec. 5.** *(1) The legislature establishes the watershed policy task force to make recommendations on policies for the legislature to consider. The task force shall be established by May 1, 1994, and shall complete its tasks and report to the legislature by December 1, 1995. The task force shall expire on June 30, 1996.*

(2) The watershed policy task force shall complete the following tasks:

(a) The development of recommendations for goals and measurable objectives for watersheds in the state of Washington. Such goals and measurable objectives shall recognize the unique characteristics and circumstances of each watershed. The goals and measurable objectives recommended shall address at least the following values inherent in watersheds: Fish and wildlife, water, beneficial economic uses of natural resources including timber and fish harvest and agricultural use, wetlands protection, employment, recreation, and educational opportunities;

(b) The identification of proposed strategies for establishing and funding locally or regionally based watershed planning and implementation activities which would help achieve the goals and measurable objectives proposed for adoption by the legislature;

(c) Identification of barriers to cooperation and possible incentives to encourage local governments, tribal governments, private landowners, and citizen participation in watershed planning and implementation;

(d) Recommendations for legislative policy changes to integrate state watershed planning and its implementation with land use planning and regulation responsibilities of local governments under the growth management act and other relevant acts; and

(e) Recommendations for coordination with student and citizen watershed protection efforts.

(3) Members may be appointed by May 1, 1994, to the task force as follows:

(a) The watershed coordinating council shall appoint four of its members to the task force;

(b) The speaker of the house of representatives shall appoint two members to the task force, one from the majority party and one from the minority party;

(c) The president of the senate shall appoint two members to the task force, one from the majority party and one from the minority party; and

(d) The governor, the speaker of the house of representatives, and the president of the senate shall jointly appoint twelve additional members to the task force. The members so appointed shall be selected to represent each of the following interests: Small private forest landowners, large private forest landowners, agricultural interests east of the crest of the Cascade mountains, agricultural interests west of the crest of the Cascade mountains, commercial fishing, recreational fishing, labor interests from a natural resource related union, federally recognized Indian tribes, the environmental community (two members), cities, and counties. The task force shall encourage a representative from federal land resource management agencies to attend and participate in task force meetings.

(4) For the purposes of this section, "measurable objective" means a results-oriented objective against which general state goals and specific individual watershed goals can be evaluated as to current and continuing progress in meeting such goals.

**Sec. 5 was vetoed, see message at end of chapter.*

Passed the House March 10, 1994.

Passed the Senate March 9, 1994.

Approved by the Governor April 1, 1994, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

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

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 2741 entitled:

"AN ACT Relating to coordinated, watershed-based natural resource planning;"

Increasingly, attention is being given to watersheds as a basis for natural resource management and environmental protection. While the term "watershed" connotes comprehensiveness, much of the natural resources planning, implementation, and restoration work in state watersheds is done in a piecemeal, uncoordinated basis often based on functional interest or land ownership. This lack of coordination is a problem, and the legislature is to be applauded for its attempt to deal with this problem through the provisions in Engrossed Substitute House Bill No. 2741. It is a concern I share.

Section 5 of Engrossed Substitute House Bill No. 2741 establishes a watershed policy task force charged with making recommendations to the legislature on statewide goals and objectives for watershed planning and implementation efforts and facilitating watershed planning and implementation efforts on a local level. Section 3 of Engrossed Substitute House Bill No. 2741 establishes the watershed coordinating council. While the majority of tasks set out for the watershed policy task force are important, the task force itself unnecessarily duplicates the watershed coordinating council established in section 3. For this reason, I am vetoing section 5 of Engrossed Substitute House Bill No. 2741, and by Executive Order, I will ask the watershed coordinating council established by this bill to perform the functions listed in section 5(2)(b), (c), (d), and (e) of Engrossed Substitute House Bill No. 2741.

Section 5(a) requires the task force to develop recommendations for goals and measurable objectives for watersheds on a statewide basis. There are many initiatives currently underway attempting to establish goals and objectives on a local watershed-by-watershed basis. This is an extremely difficult and time-consuming process, but goals and objectives must be established on a local watershed-by-watershed basis if they are to be real and meaningful. For this reason, I am also asking the watershed coordinating council to identify those watersheds where goals and objectives have already been established and to provide recommendations to facilitate the development of goals and objectives for the state's other watersheds.

For the purpose of these section 5 tasks to be performed by the watershed coordinating council, the council should work with an advisory committee consisting of interested parties including tribes, affected landowners, the timber industry and the environmental community.

With the exception of section 5, Engrossed Substitute House Bill No. 2741 is approved."

CHAPTER 240

[Substitute House Bill 2754]

COURT PROCEEDINGS—CLOSED CIRCUIT TELEVISION AND ELECTRONIC EQUIPMENT USE

AN ACT Relating to court administration; and amending RCW 2.56.030.

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

Sec. 1. RCW 2.56.030 and 1993 c 415 s 3 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) 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;

(15) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers by July 1, 1988. The curriculum shall be updated yearly to reflect changes in statutes, court rules, or case law;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be 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;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be completed and made available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel by October 1, 1993. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts state-wide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required.

Passed the House March 6, 1994.

Passed the Senate February 26, 1994.

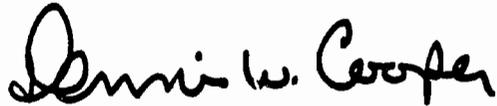
Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 1994 regular session (53rd Legislature), chapters 1 through 240, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 10th day of May, 1994.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial 'D' and 'C'.

DENNIS W. COOPER
Code Reviser

